Bengaluru Smart Infrastructure Limited

(B-SMILE)

Public Private Partnership

CONCESSION AGREEMENT

For

Design and Construction of 3-Lane Underground Twin Tunnel Road from Hebbal Esteem Mall junction (Km. 0+000) and Silk Board KSRP Junction (Km.16+745) along with 3-lane/2-lane entry & exit ramps on Modified BOOT Mode including operation and maintenance in Bengaluru City (North South Corridor). Package-2: Seshadri Road (Km 8.748) to Silk Board (Km 16.745).

Bengaluru

BID DOCUMENT

VOLUME - II

July 2025

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PART I PRELIMINARY

DRAFT CONCESSION AGREEMENT

CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the …….. day of ……, 20…..

BETWEEN

1 **Bengaluru Smart Infrastructure Limited** (B-SMILE), represented by its Superintendent Engineer, B-SMILE and having its principal offices at 3rd Floor, # 30/1, Thimmaiah Road, Millers Tank Bund Area, Vasanthnagar, Bengaluru-560 052, (hereinafter referred to as the "Authority" which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part;

AND

2 {…….. LIMITED}, a company incorporated under the provisions of the Companies Act, 1956/Companies Act, 2013, as the case may be, and having its registered office at, (hereinafter referred to as the "**Concessionaire**" which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

WHEREAS:

(A) The Government of Karnataka had entrusted to the Authority for Design and Construction of 3-Lane Underground Twin Tunnel Road from Hebbal Esteem Mall junction (Km. 0+000) and Silk Board KSRP Junction (Km.16+745) along with 3-lane/2-lane entry & exit ramps on Modified BOOT Mode including operation and maintenance in Bengaluru City (North South Corridor). Package-2 Seshadri Road (Km 8.748) to Silk Board (Km 16.745).The entity B-SMILE has been incorporated by the Government of Karnataka as per Government Order UDD 540 MNY 2024 Dated 02.05.2025.

(B) The Authority had resolved to Design and Construction of 3-Lane Underground Twin Tunnel Road from Hebbal Esteem Mall junction (Km. 0+000) and Silk Board KSRP Junction (Km.16+745) along with 3-lane/2-lane entry & exit ramps on Modified BOOT Mode including operation and maintenance in Bengaluru City (North South Corridor). Package-2 Seshadri Road (Km 8.748) to Silk Board (Km 16.745). in accordance with the terms and conditions to be set forth in a concession agreement to be entered into.

(C) The Authority had accordingly adopted a single stage two envelope bidding process and accordingly invited proposals by its [Notice/ Request for Proposal No. *** dated ***] (the "**Request for Proposal" or "RFP**") for qualification and short listing of bidders and financial bid for Development, operation and maintenance of the above referred section of Tunnel-** on Modified BOOT Mode basis.

(D) The Authority had prescribed the technical and commercial terms and conditions in theRFP and invited bids comprising technical and financial bids from the bidders for undertaking the Project.

(E) After evaluation of the bids received, the Authority had technically qualified certain bidders including, inter alia, the {the selected bidder/ consortium comprising……., ……. and(collectively the "Consortium") with …….. as its Lead Member} and accepted the financial bid of the {selected bidder/ Consortium} and issued its Letter of Award No.…….. dated …….. (hereinafter called the "LOA") to the {selected bidder/ Consortium} requiring, inter alia, the execution of this Concession Agreement within 45 (forty-five) days of the date of issue thereof.

(F) {The selected bidder/ Consortium has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act 2013, and has requested the Authority to accept the Concessionaire as the entity which shall undertakeand perform the obligations and exercise the rights of the selected bidder/ Consortium under the LOA,}including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

(G) {By its letter dated , the Concessionaire has also joined in the said request of the selected bidder/ Consortium to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected bidder/ Consortium including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected bidder/ Consortium for the purposes hereof.}

(H) The Authority has agreed to the said request of the {selected bidder/Consortium and the}Concessionaire

and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

NOW THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

The words and expressions beginning with capital letters and defined in this Agreement(including those in Article 48) shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedulesand used therein shall have the meaning ascribed thereto in the Schedules.

1.2 Interpretation

1.2.1 In this Agreement, unless the context otherwise requires,

(a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder.

(b) references to laws of India or Indian law or regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of India and as from time to time may be amended, modified, supplemented, extended or re-enacted.

(c) references to a "**person**" and words denoting a natural person shall be construedas a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whetheror not having separate legal personality) of two or more of the above and shall include successors and assigns.

(d) the table of contents, headings or sub-headings in this Agreement are forconvenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement.

(e) the words "**include**" and "**including**" are to be construed without limitation andshall be deemed to be followed by **"without limitation"** or **"but not limited to"**whether or not they are followed by such phrases.

(f) references to "**construction**" or **"building"** include, unless the context otherwise requires, investigation, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and "**construct**" or **"build"** shall be construed accordingly.

(g) references to "**development**" include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and otheractivities incidental thereto, and "**develop**" shall be construed accordingly.

(h) any reference to any period of time shall mean a reference to that according to Indian Standard Time.

(i) any reference to "hour" shall mean a period of 60 (sixty) minutes commencing either on the hour or on the half hour of the clock, which by way of illustration means 5.00 (five), 6.00 (six), 7.00 (seven) and so on being hours on the hour of the clock and 5.30 (five thirty), 6.30 (six thirty), 7.30 (seven thirty) and so on being hours on the half hour of the clock;

(j) any reference to day shall mean a reference to a calendar day.

(k) references to a "**business day**" shall be construed as a reference to a day (otherthan a Sunday) on which banks in Karnataka are generally open for business.

(l) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar.

(m) references to any date, period or Project Milestone shall mean and include suchdate, period or Project Milestone as may be extended pursuant to this Agreement;

(n) any reference to any period commencing "**from**" a specified day or date and "**till**" or "**until**"

a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is nota business day, then the period shall run until the end of the next business day;

(o) the words importing singular shall include plural and vice versa;

(p) references to any gender shall include the other and the neutral gender;

(q) "**lakh**" means a hundred thousand (100,000) and "**crore**" means ten million (10,000,000);

(r) "**indebtedness**" shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whetherpresent or future, actual or contingent;

(s) references to the "**winding-up**", "**dissolution**", "**insolvency**", or "**reorganization**" of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in whichsuch company or corporation carries on business including the seeking ofliquidation, winding-up, reorganization, dissolution, arrangement, protection or relief of debtors;

(t) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, license or document of any descriptionshall be construed as reference to that agreement, deed, instrument, license or other document as amended, varied, supplemented, modified or suspended at thetime of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;

(u) any agreement, consent, approval, authorization, notice, communication, information or report or any other correspondence required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be validand effective only if it is in writing under the hand of a duly authorized representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;

(v) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly setout in the body of this Agreement.

(w) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement,and references to a Paragraph shall, subject to any contrary indication, beconstrued as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears.

(x) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuinepre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the "**Damages**"); and

(y) time shall be of the essence in the performance of the Parties' respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required tobe provided or furnished by the Concessionaire to the Authority and/or the IndependentEngineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.

1.2.3 The rule of construction, if any, that a contract should be interpreted against the partiesresponsible for the drafting and preparation thereof, shall not apply.

1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning and, for these purposes,the General Clauses Act 1897 shall not apply.

1.3 Measurements and arithmetic conventions

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up andbelow 5 (five) being rounded down.

1.4 Priority of agreements, clauses and schedules

1.4.1 This Agreement, and all other agreements and documents forming part of or referred toin this agreement are to be taken as mutually explanatory and, unless otherwise expresslyprovided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:

(a) this Agreement; and

(b) all other agreements and documents forming part hereof or referred to herein;

i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.

1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:

(a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;

(b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;

(c) between any two Schedules, the Schedule relevant to the issue shall prevail;

(d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;

(e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and

(f) between any value written in numerals and that in words, the latter shall prevail.

PART II THE CONCESSION

ARTICLE 2 SCOPE OF THE PROJECT

2.1 Scope of the Project

The scope of the Project (the "**Scope of the Project**") shall mean and include, during the Concession Period:

(a) construction of the Project Tunnel on the Site set forth in Schedule-A and as specified in Schedule-B together with provision of Project Facilities as specified in Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D;

(b) operation and maintenance of the Project Tunnel in accordance with the provisions of this Agreement; and

(c) performance and fulfilment of all other obligations of the Concessionaire in accordance with the provisions of this Agreement and matters incidental thereto or necessary for the performance of any or all of the obligations of the Concessionaire under this Agreement.

(d) finalization of design of the Project Tunnel in consultation with respective stakeholders of the future development projects as clarified in Competing Road and Additional Tollway.

(e) in case of construction of the metro rail network above the Project Tunnel, on written request from the Authority, the Concessionaire shall promptly render all support and assistance to facilitate the construction, operation, and maintenance of the metro rail network as would be required by the Authority *inter alia* including making suitable arrangements for ensuring efficient diversion of the Traffic.

(f) **Package Interface Obligation**: The North-South twin Tunnel Project is to be implemented in two distinct packages, each awarded under separate concession agreements. The Concessionaire, in respect of this Package, shall ensure seamless coordination, interface management, and cooperation with the Concessionaire appointed for the other Package. This shall include, without limitation, alignment of design interfaces, construction sequencing, safety protocols, utilities integration, and all such activities that may have interdependencies between the two Packages. The Concessionaire shall provide all necessary technical support, access, and assistance as may be reasonably required to ensure that the overall Project is implemented in a synchronized and efficient manner, without delay or conflict. The Authority may, from time to time, issue directions to facilitate such coordination, and the Concessionaire shall be bound to comply with the same.

(g) **Coordination with East-West Twin Tunnel**: The Authority intends to undertake the development of an additional twin tunnel infrastructure initiative, tentatively titled the East-West Twin Tunnel Project, which may intersect or interface with the North-South Twin Tunnel corridor. Accordingly, the Concessionaire shall ensure that all design, alignment, and interface planning under this Project are duly coordinated with the proposed East-West Twin Tunnel Project. The Concessionaire shall undertake such design activities in close consultation with the Authority and shall incorporate, to the extent practicable, any directives, design parameters, or alignment considerations communicated by the Authority in relation thereto. The Concessionaire shall be responsible for integrating such inputs into the design development process and shall obtain written concurrence of the Authority prior to finalization of the relevant design elements.

ARTICLE 3 GRANT OF CONCESSION

3.1 The Concession

3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, license and authority to design, construct, operate and maintain the Project (the "**Concession**") for a period of 34 (thirty four) years (including 50 months for Construction)* commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein and in accordance with Applicable Laws.

*Thirty-Four years is the Estimated Concession Period. As per the Modified BOOT model, the Concession Period shall be variable to ensure that the Concessionaire is able to recover the bid TCV and shall be adjusted as per Clause 3.1.1(A).

3.1.1 (A) The Concession Period will be reassessed regularly to monitor toll collections and determine necessary adjustments:

(a) The Concession Period shall be reviewed annually at the end of each year

(b) If the discounted value of realized toll revenues falls below the bid Total Concession Value (TCV), the Concession Period shall be extended in increments of one year until the actual toll revenues reaches 90% of the bid TCV. Once the discounted value of actual toll revenues reaches 90% of the bid TCV, the review frequency shall shift to monthly. As soon as the bid TCV is met, the Concession Period shall be terminated immediately.

(c) For discounting the toll revenues each year, the Authority shall apply floating rate as follows: SBI 3-year MCLR rate + 2.5%.

(d) The Concession Period, after the COD, may be extended by a maximum of 10 years beyond the estimated 34 years. If, even after this extension of 10 years, the discounted toll revenues remain below the bid TCV, no further extensions shall be allowed.

Illustrative Scenarios

For illustrative purposes, hypothetical toll revenue profiles have been used in the examples below to demonstrate application of the abovementioned provisions:

- The illustrations shown in the table are purely hypothetical, and the numbers are by no means representative of actual tolling and revenue potential. Consider that the Bid TCV was Rs. 670, with an estimated concession period of 35 years (including 5 years of construction).
- At the end of each year, the toll revenues collected are discounted to their Net Present Value as on the Appointed Date, with the discounting rate being the SBI's 3-year MCLR rate at that time + 2.5%. The summation of these values is tracked against the Bid TCV to determine the adjustments to the Concession Period.

- In the situation illustrated in Table 1, the toll revenues are higher than expected, which causes the cumulative NPV of tolls to reach 90% in the year 2055 (i.e., 25 years from commencement of operations). Following this, the frequency of review of the Concession Period shifts to monthly. As soon as the NPV of the toll revenues collected (as on Appointed Date) reaches 100% of the bid TCV in June 2059, the Concession Period is terminated (ahead of the planned 30-year term).

Table 1: Illustration (Concession Period Curtailed due to High Traffic)

Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
2025	*Construction period*	9.00%	0	0	0%	*Construction period*
2026		9.00%	0	0	0%	
2027		9.10%	0	0	0%	
2028		9.20%	0	0	0%	
2029		9.05%	0	0	0%	
2030		9.10%	0	0	0%	
2031	100	9.13%	51.7	52	8%	Continue
2032	103	9.17%	47.6	99	15%	Continue
2033	106	9.23%	43.7	143	21%	Continue
2034	109	9.17%	40.5	183	27%	Continue
2035	113	9.34%	36.8	220	33%	Continue
2036	116	9.23%	34.2	254	38%	Continue
2037	119	9.32%	31.2	286	43%	Continue
2038	123	9.27%	28.9	315	47%	Continue
2039	127	9.25%	26.7	341	51%	Continue
2040	130	9.16%	25.0	366	55%	Continue
2041	136	9.19%	23.1	389	58%	Continue
2042	141	9.23%	21.4	411	61%	Continue
2043	147	9.28%	19.8	431	64%	Continue
2044	153	9.31%	18.3	449	67%	Continue
2045	159	9.25%	17.2	466	69%	Continue
2046	164	9.23%	15.9	482	72%	Continue
2047	168	9.18%	14.8	497	74%	Continue
2048	180	9.32%	13.8	511	76%	Continue
2049	193	9.28%	13.3	524	78%	Continue
2050	216	9.31%	13.3	537	80%	Continue
2051	242	9.32%	13.2	550	82%	Continue
2052	271	9.24%	13.5	564	84%	Continue

Table 1: Illustration (Concession Period Curtailed due to High Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
2053	303	9.16%	13.8	578	86%	Continue
2054	340	9.24%	13.6	591	88%	Continue
2055	381	9.36%	13.2	605	90%	**Continue**
Jan-56	38	9.32%	1.3	606	90%	Continue
Feb-56	38	9.26%	1.4	607	90%	Continue
Mar-56	39	9.18%	1.4	609	91%	Continue
Apr-56	39	9.25%	1.4	610	91%	Continue
May-56	40	9.20%	1.4	612	91%	Continue
Jun-56	40	9.32%	1.4	613	91%	Continue
Jul-56	40	9.19%	1.5	614	91%	Continue
Aug-56	41	9.17%	1.5	616	92%	Continue
Sep-56	41	9.25%	1.5	617	92%	Continue
Oct-56	42	9.23%	1.5	619	92%	Continue
Nov-56	42	9.18%	1.5	620	92%	Continue
Dec-56	42	9.32%	1.5	622	93%	Continue
Jan-57	43	9.28%	1.4	623	93%	Continue
Feb-57	43	9.31%	1.4	625	93%	Continue
Mar-57	44	9.27%	1.4	626	93%	Continue
Apr-57	44	9.25%	1.4	627	93%	Continue
May-57	45	9.16%	1.5	629	94%	Continue
Jun-57	45	9.19%	1.5	630	94%	Continue
Jul-57	46	9.23%	1.5	632	94%	Continue
Aug-57	46	9.28%	1.5	633	94%	Continue
Sep-57	46	9.31%	1.5	635	94%	Continue
Oct-57	47	9.25%	1.5	636	95%	Continue
Nov-57	47	9.23%	1.5	638	95%	Continue
Dec-57	48	9.18%	1.6	639	95%	Continue
Jan-58	48	9.32%	1.4	641	95%	Continue
Feb-58	49	9.28%	1.4	642	96%	Continue
Mar-58	49	9.31%	1.4	643	96%	Continue
Apr-58	51	9.05%	1.5	645	96%	Continue

Table 1: Illustration (Concession Period Curtailed due to High Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
May-58	52	9.10%	1.6	646	96%	Continue
Jun-58	54	9.13%	1.6	648	96%	Continue
Jul-58	55	9.17%	1.6	650	97%	Continue
Aug-58	57	9.23%	1.6	651	97%	Continue
Sep-58	59	9.17%	1.7	653	97%	Continue
Oct-58	61	9.34%	1.7	655	97%	Continue
Nov-58	62	9.23%	1.8	657	98%	Continue
Dec-58	64	9.32%	1.8	658	98%	Continue
Jan-59	66	9.27%	1.7	660	98%	Continue
Feb-59	68	9.25%	1.7	662	98%	Continue
Mar-59	70	9.16%	1.8	664	99%	Continue
Apr-59	72	9.10%	1.9	666	99%	Continue
May-59	75	9.20%	1.9	668	99%	Continue
Jun-59	77	9.05%	2.1	670	100%	Terminate

- In the situation illustrated in Table 2, the toll revenues are lower than expected, which causes the cumulative NPV of tolls to reach only 88% of the Bid TCV by 2060. The Concession Period is therefore increased by increments of one year, until the cumulative NPV of tolls reached 90% of the Bid TCV in 2062 (i.e., 32 years from operations). Following this, the frequency of review of the Concession Period shifts to monthly. The Concession Period is increased in increments of one month year until the NPV of the toll revenues collected (as on Appointed Date) reaches 100% of the bid TCV in September 2069, and the Concession Period is consequently terminated after an extension of 9 years and 9 months beyond the originally estimated term.

Table 2: Illustration (Concession Period Extended due to Low Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
2025	*Construction period*	9.00%	0	0	0%	*Construction period*
2026		9.00%	0	0	0%	
2027		9.10%	0	0	0%	
2028		9.20%	0	0	0%	
2029		9.05%	0	0	0%	
2030		9.10%	0	0	0%	
2031	100	9.13%	51.7	52	8%	Continue

Table 2: Illustration (Concession Period Extended due to Low Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
2032	103	9.17%	47.6	99	15%	Continue
2033	106	9.23%	43.7	143	21%	Continue
2034	109	9.17%	40.5	183	27%	Continue
2035	113	9.34%	36.8	220	33%	Continue
2036	116	9.23%	34.2	254	38%	Continue
2037	119	9.32%	31.2	286	43%	Continue
2038	123	9.27%	28.9	315	47%	Continue
2039	127	9.25%	26.7	341	51%	Continue
2040	130	9.16%	25.0	366	55%	Continue
2041	136	9.19%	23.1	389	58%	Continue
2042	141	9.23%	21.4	411	61%	Continue
2043	147	9.28%	19.8	431	64%	Continue
2044	153	9.31%	18.3	449	67%	Continue
2045	159	9.25%	17.2	466	69%	Continue
2046	164	9.23%	15.9	482	72%	Continue
2047	167	9.18%	14.7	497	74%	Continue
2048	170	9.32%	13.0	510	76%	Continue
2049	174	9.28%	12.0	522	78%	Continue
2050	177	9.31%	10.9	533	79%	Continue
2051	181	9.32%	9.9	542	81%	Continue
2052	184	9.24%	9.2	552	82%	Continue
2053	188	9.16%	8.6	560	83%	Continue
2054	192	9.24%	7.7	568	85%	Continue
2055	195	9.36%	6.8	575	86%	**Continue**
2056	199	9.32%	7.0	582	87%	Continue
2057	203	9.26%	7.2	589	88%	Continue
2058	207	9.18%	7.5	596	89%	Continue
2059	212	9.25%	7.5	582	87%	Continue
2060	216	9.20%	7.8	590	88%	Continue
2061	220	9.32%	7.7	598	89%	Continue
2062	224	9.19%	8.1	606	90%	Continue

Table 2: Illustration (Concession Period Extended due to Low Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
Jan-63	22	9.17%	0.4	606	90%	Continue
Feb-63	24	9.25%	0.4	607	90%	Continue
Mar-63	25	9.23%	0.4	607	90%	Continue
Apr-63	26	9.18%	0.4	607	90%	Continue
May-63	27	9.32%	0.4	608	90%	Continue
Jun-63	29	9.28%	0.5	608	91%	Continue
Jul-63	30	9.31%	0.5	609	91%	Continue
Aug-63	32	9.24%	0.5	609	91%	Continue
Sep-63	33	9.16%	0.6	610	91%	Continue
Oct-63	35	9.24%	0.6	611	91%	Continue
Nov-63	35	9.36%	0.6	611	91%	Continue
Dec-63	36	9.32%	0.6	612	91%	Continue
Jan-64	36	9.32%	0.5	612	91%	Continue
Feb-64	37	9.19%	0.6	613	91%	Continue
Mar-64	38	9.17%	0.6	613	91%	Continue
Apr-64	38	9.25%	0.6	614	91%	Continue
May-64	39	9.23%	0.6	614	91%	Continue
Jun-64	40	9.18%	0.6	615	92%	Continue
Jul-64	41	9.32%	0.6	616	92%	Continue
Aug-64	42	9.28%	0.6	616	92%	Continue
Sep-64	42	9.25%	0.6	617	92%	Continue
Oct-64	43	9.23%	0.6	617	92%	Continue
Nov-64	44	9.18%	0.7	618	92%	Continue
Dec-64	45	9.32%	0.6	619	92%	Continue
Jan-65	46	9.28%	0.6	619	92%	Continue
Feb-65	47	9.31%	0.6	620	92%	Continue
Mar-65	48	9.32%	0.6	621	92%	Continue
Apr-65	49	9.24%	0.6	621	92%	Continue
May-65	50	9.16%	0.7	622	93%	Continue
Jun-65	51	9.24%	0.7	623	93%	Continue
Jul-65	52	9.36%	0.7	623	93%	Continue

Table 2: Illustration (Concession Period Extended due to Low Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
Aug-65	53	9.32%	0.7	624	93%	Continue
Sep-65	54	9.26%	0.7	625	93%	Continue
Oct-65	55	9.18%	0.7	625	93%	Continue
Nov-65	56	9.05%	0.8	626	93%	Continue
Dec-65	57	9.10%	0.8	627	93%	Continue
Jan-66	58	9.13%	0.7	628	93%	Continue
Feb-66	59	9.17%	0.7	628	94%	Continue
Mar-66	61	9.23%	0.7	629	94%	Continue
Apr-66	62	9.17%	0.7	630	94%	Continue
May-66	63	9.34%	0.7	631	94%	Continue
Jun-66	64	9.23%	0.8	631	94%	Continue
Jul-66	66	9.32%	0.8	632	94%	Continue
Aug-66	67	9.27%	0.8	633	94%	Continue
Sep-66	68	9.34%	0.8	634	94%	Continue
Oct-66	70	9.23%	0.8	634	94%	Continue
Nov-66	71	9.32%	0.8	635	95%	Continue
Dec-66	72	9.27%	0.8	636	95%	Continue
Jan-67	74	9.25%	0.8	637	95%	Continue
Feb-67	75	9.16%	0.8	638	95%	Continue
Mar-67	77	9.19%	0.8	639	95%	Continue
Apr-67	78	9.23%	0.8	639	95%	Continue
May-67	80	9.28%	0.8	640	95%	Continue
Jun-67	82	9.31%	0.8	641	95%	Continue
Jul-67	83	9.25%	0.9	642	96%	Continue
Aug-67	85	9.23%	0.9	643	96%	Continue
Sep-67	87	9.18%	0.9	644	96%	Continue
Oct-67	88	9.32%	0.9	645	96%	Continue
Nov-67	90	9.28%	0.9	646	96%	Continue
Dec-67	92	9.31%	0.9	647	96%	Continue
Jan-68	94	9.32%	0.9	647	96%	Continue
Feb-68	96	9.24%	0.9	648	96%	Continue

Table 2: Illustration (Concession Period Extended due to Low Traffic)						
Year	Actual toll revenue	3y MCLR in the year	NPV(tolls collected)	Cumulative NPV(tolls)	Cumulative TCV %	Verdict
Mar-68	98	9.16%	0.9	649	97%	Continue
Apr-68	99	9.24%	0.9	650	97%	Continue
May-68	101	9.36%	0.9	651	97%	Continue
Jun-68	103	9.32%	0.9	652	97%	Continue
Jul-68	106	9.26%	1.0	653	97%	Continue
Aug-68	108	9.18%	1.0	654	97%	Continue
Sep-68	110	9.25%	1.0	655	98%	Continue
Oct-68	112	9.20%	1.1	656	98%	Continue
Nov-68	114	9.32%	1.0	657	98%	Continue
Dec-68	117	9.19%	1.1	658	98%	Continue
Jan-69	119	9.17%	1.0	659	98%	Continue
Feb-69	121	9.25%	1.0	660	98%	Continue
Mar-69	124	9.23%	1.0	661	98%	Continue
Apr-69	126	9.18%	1.1	663	99%	Continue
May-69	129	9.32%	1.1	664	99%	Continue
Jun-69	131	9.28%	1.1	665	99%	Continue
Jul-69	134	9.31%	1.1	666	99%	Continue
Aug-69	137	9.24%	1.2	667	99%	Continue
Sep-69	189	9.16%	1.6	669	**100%**	**Continue**

3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:

(a) Right of Way, access and license to the Site for the purpose of and to the extent conferred by the provisions of this Agreement.

(b) finance and construct the Project Tunnel.

(c) manage, operate and maintain the Project Tunnel and regulate the use thereof by third parties.

(d) demand, collect and appropriate Fee from vehicles and Users liable for payment of Fee for using the Project Tunnel or any part thereof and refuse entry of any vehicle if the Fee due is not paid.

(e) perform and fulfil all of the Concessionaire's obligations under and in accordance with this Agreement.

(f) save as otherwise expressly provided in this Agreement, bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and

(g) neither assign, transfer or sublet or create any lien or Encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project Tunnel nor transfer, lease or part possession thereof, save and except as expressly permitted by this Agreement or the Substitution Agreement.

(h) Construct, maintain, operate and collect appropriate Fee from users for the Ancillary revenue streams. Developers are expected to monetize spaces within Intermodal Hubs and tunnels as follows:

From the tunnel:

- **Tolls from buses**: The Concessionaire may collect tolls from buses in addition to tolls from passenger vehicles, in accordance with the toll rates as per Article 27.
- **Advertisement and branding rights**: The Concessionaire may auction **naming rights** for entry/exit ramps and intermodal hubs, as well as monetize **advertisement spaces** in toll Plazas and Intermodal Hubs for additional revenue, in line with existing and future advertising policies of the BBMP/Authority.

From the Intermodal Hubs:

- **Parking and retail spaces in the intermodal hubs**: Concessionaire may utilize spaces in the intermodal hubs (ensuring layouts in line with DPR) to create parking spaces and retail spaces for additional revenues. The parking fees and minimum area to be devoted to parking shall be as per the guidelines defined by the Authority. With respect to the retail spaces, a maximum FSI of 5 is permitted for development for the Intermodal Hubs above the surface (being Transit Oriented Development), which might change basis the existing rules and laws of the State Government.

The land for these hubs shall be provided to the Concessionaire by the Government. The Intermodal Hubs shall be developed in accordance with Clause 12.8.

The risk for ancillary revenues as well as any additional costs related to the same shall be borne solely by the Concessionaire. While these ancillary revenues will not be included in the calculations for review of the Concession Period, the Concessionaire must make all records of ancillary revenue available for audits as and when directed by the Authority.

ARTICLE 4 CONDITIONS PRECEDENT

4.1 Conditions Precedent

4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 24, 34, 44 and 47, or unless the context otherwise requires, the respective rights and obligations of the Parties underthis Agreement shall be subject to the satisfaction in full of the condition's precedent specified in this Clause 4.1 (the "**Conditions Precedent**"). For avoidance of doubt, unless the context otherwise requires, only the Clauses mentioned hereinabove shall be operative prior to fulfilment of the Conditions Precedent set out in Clauses 4.1.2 and 4.1.3 by both the Parties.

4.1.2 The Concessionaire may, upon providing the Performance Security to the Authority in accordance with Article 9, at any time after [90 (ninety)]days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 90 (Ninety) days of the notice, or such longer period not exceeding 240 (two hundred forty) days as may be specified therein, and the Conditions Precedent required to be satisfied by the Authority shall be deemed to have been fulfilled when the Authority shall have:

(a) procured for the Concessionaire the Right of Way to the Site in accordance withthe provisions of Clause 10.3.2, as per Annexure 2 of Schedule A;

(b) issued the Fee Notification;

(c) [deleted]

(d) procured approval of the Railway authorities in the form of a general arrangement drawing that would enable the Concessionaire to construct road overbridges/ under bridges at level crossings on the Project Tunnel in accordance with the Specifications and Standards and subject to the terms and conditions specified in such approval, as and when required;]

(e) procured all Applicable Permits relating to environmental protection and conservation of the Site; The Project is exempt from Environmental Clearance as per the document produced in Schedule A Annex-iv).]; and

(f) appointed the Independent Engineer within 90 (ninety) days of this Agreement.

Provided that the Authority at its discretion may waive the Condition Precedent in Clause 4.1.2 (b) till 6 months prior to the Scheduled completion Date as provided in Schedule G; and Clause 4.1.2 (d) for a maximum period of 180 days. All other Condition Precedents shall have to be satisfied prior to declaration of Appointed Date.

4.1.3 The Conditions Precedent required to be satisfied by the Concessionaire prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:

(a) provided Performance Security to the Authority;

(b) executed and procured execution of the Escrow Agreement;

(c) executed and procured execution of the Substitution Agreement;

(d) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;

(e) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;

(f) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model including the details as per format prescribed at Schedule Y, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model, which is workable, formulae linked and interactive, in MS Excel version or any substitute thereof, which is acceptable to the Authority containing financials as appraised and adopted by Senior Lenders;

(g) delivered to the Authority from {the Consortium Members, their respective} confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement;

(h) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof; and

(i) satisfy himself about the availability of minimum 50% of the Construction Zone as per joint memorandum signed in accordance with clause 10.3.1 and 10.3.2, subject to the condition that the available Construction Zone shall be sufficient for achievement of COD.

4.1.4 Each Party shall make all reasonable endeavors to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedentfor which that Party is responsible.

4.1.5 The Parties shall notify each other in writing at least once a month on the progress madein satisfying the Conditions Precedent. Each Party shall promptly inform the other Partywhen any Condition Precedent for which it is responsible has been satisfied.

4.2 Damages for delay by the Authority

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by theConcessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security.

4.3 Damages for delay by the Concessionaire

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred andeighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.2% (zero point two per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 20% (twenty percent) of the Performance Security. Provided further that such Damages for delay by the Concessionaire for non-fulfilment of Conditions Precedent shall be payable within 15 (fifteen) days of achievement of fulfilment of Conditions Precedent.

4.4 Deemed Termination upon Delay

Without prejudice to the provisions of Clause 4.2 and 4.3, and subject to the provisionsof Clause 9.2, the Parties expressly agree that in the event the Appointed Date does notoccur, for any reason whatsoever, before the 1st (first) anniversary of the date of this Agreement or the extended period provided in accordance with this Agreement, all rights, privileges, claims and entitlements of the Concessionaire under or arising out ofthis Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. Provided, however, that in the event the delay in occurrence of the Appointed Date is for reasons attributable to the Concessionaire, the Performance Security of the Concessionaire shall be encashed and appropriated by the Authority to the extent of an amount calculated as 1% (one per cent) of the Total Project Cost.

ARTICLE 5 OBLIGATIONS OF THE CONCESSIONAIRE

5.1 Obligations of the Concessionaire

5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project Tunnel and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.

5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.

5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.

5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:

(a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;

(b) procure, as required, the appropriate proprietary rights, licenses, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project Tunnel;

(c) perform and fulfil its obligations under the Financing Agreements;

(d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;

(e) make reasonable efforts to facilitate the acquisition of land required for the purposes of the Agreement;

(f) ensure and procure that its Contractors comply with all Applicable Permits and Commercial Property Development Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;

(g) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;

(h) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and

(i) transfer the Project Tunnel, including the intermodal hubs and immovable assets thereof, to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

(j) provide, arrange and operate casting yard(s) and batching plant(s) including procurement of land and setup of plant & machineries and arrangements towards security and safety for the same.

(k) Undertake extraction, transport & disposal of muck, soil, earth. No land shall be provided by the Authority for the same. In case government land is available, the same may be made available to the Concessionaire on a lease basis as per guidance value. Additionally, if there are lands identified where muck is required by the Authority for levelling purpose, the Concessionaire must dispose the muck at these sites (including levelling) free of cost within the radius of 30 km, from the point of extraction.

However, the material obtained from tunnel excavation, if suitable, may be used by the Concessionaire for refilling and restoration purposes within the Project Tunnel. The excavated material must not be used by the Concessionaire for commercial purposes.

5.1.5 The Concessionaire shall comply with all requirements of the Escrow Bank in order to provide to the Authority the facility for online viewing and downloading the account statement of Escrow Account

at all times during the Concession Period.

5.2 Obligations relating to Project Agreements

5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liablefor all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreementor agreement shall excuse the Concessionaire from its obligations or liability hereunder.

5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 30 (thirty) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that any failure or omission of the Authority to review and/ or comment hereunder shall not be construed or deemed as acceptance of any such agreement or document by the Authority. No review and/ or observation of the Authority and/ or its failure to review and/ or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.

5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority or results in breach of any provision of this Agreement, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Due.

5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the "Covenant"). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.

5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

5.3 Obligations relating to Change in Ownership

5.3.1 The Concessionaire shall not undertake or permit any Change in Ownership, except with the prior approval of the Authority and subject to the following conditions.

i) no objections from the Senior Lenders.

ii) The eligibility condition for Change in Ownership request will be issuance of COD and completion of Punch List items excluding the Punch List items pending due to the reasons attributable to the Authority.

iii) The Concessionaire shall not be in default of

a. Paying Concession Fee to the Authority, if applicable

b. O&M obligations.

5.3.2 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that:

(i) all acquisitions of Equity by an acquirer, either by himself or with any person acting in concert, directly or indirectly, including by transfer of the direct or indirect legal or beneficial ownership or control of any Equity, in aggregate of not less than 15% (fifteen per cent) of the total Equity of the Concessionaire; or

(ii) acquisition of any control directly or indirectly of the Board of Directors of the Concessionaire by any person either by himself or together with any person or persons acting in concert with him

shall constitute a Change in Ownership requiring prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to any such acquisition of Equity or control of the Board of Directors of the Concessionaire without such prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire from any liability or obligation under this Agreement.

It is clarified that, in case the Selected Bidder is a consortium, the respective holding of each member must conform to the representation made by the consortium and accepted by the Authority as part of the bidding process (including for the purposes of meeting the minimum eligibility conditions or for evaluation of its application or bid). Any material variation thereto, if it occurs prior to COD, shall be treated as a Change in Ownership.

For the purposes of this Clause 5.3.2:

(a) the expression "acquirer", "control" and "person acting in concert" shall have the meaning ascribed thereto in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 or any statutory re-enactment thereof as in force as on the date of acquisition of Equity,or the control of the Board of Directors, as the case may be, of the Concessionaire.

(b) the indirect transfer or control of legal or beneficial ownership of Equity shall mean transfer of the direct or indirect beneficial ownership or control of any company or companies whether in India or abroad which results in the acquirer acquiring control over the shares or voting rights of shares of the Concessionaire;and

(c) power to appoint, whether by contract or by virtue of control or acquisition of shares of any company holding directly or through one or more companies (whether situate in India or abroad) the Equity of the Concessionaire, not less than half of the directors on the Board of Directors of the Concessionaire or of any company, directly or indirectly whether situate in India or abroad, having ultimate control of not less than 15% (fifteen per cent) of the Equity of the Concessionaire shall constitute acquisition of control, directly or indirectly, of the

Board of Directors of the Concessionaire.

5.4 Employment of foreign nationals

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its contractors and their sub-contractors shall besubject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its contractors or sub-contractors shall not constitute Force Majeure Event, and shall not inany manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement.

5.5 Employment of trained personnel

The Concessionaire shall ensure that the personnel engaged by it in the performance ofits obligations under this Agreement are at all times properly trained for their respectivefunctions.

5.6 Sole purpose of the Concessionaire

The Concessionaire having been set up for the sole purpose of exercising the rights andobserving and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

5.7 Branding of Project Tunnel

The Project Tunnel or any part thereof shall not be branded in any manner to advertise, display or reflect the name or identity of the Concessionaire or its shareholders, except the entry and exit ramps of the tunnel – for which naming rights may be sold by concessionaire to appropriate ancillary revenues, in mutual agreement with the Authority. The Concessionaire undertakes that it shall not, in any manner, use the name or entity of the Project Tunnel to advertise or display its own identity, brand equity or business interests, including those of its shareholders, save and except as may be necessary in the normal course of business. For the avoidance of doubt, it is agreed that the Concessionaire may display its own name at a spot where other public notices are displayed for the Users. It is further agreed that the Project Tunnel shall be known, promoted, displayed and advertised by the name of *****.

5.8 Facilities for physically challenged and elderly persons

The Concessionaire shall, in conformity with the guidelines issued from time to time by the Ministry of Social Justice and Empowerment, or a substitute thereof, procure a barrier-free environment for the physically or visually challenged and for elderly persons using the Project Tunnel.

5.9 Obligations relating to Local Content

The Concessionaire [Class I Local Supplier/ Class II Local Supplier/ Non Local Supplier] undertakes to ensure minimum Local Content in the Project Tunnel of at least [50%/20%] duly complying with the provisions of Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry, Government of India Order No. P-45021/2/2017-PP (BE- II) dated September 16, 2020, as amended or modified till Bid Due Date and the provisions under Rule 144(xi) of GFR, 2017.

ARTICLE 6 OBLIGATIONS OF THE AUTHORITY

6.1 Obligations of the Authority

6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.

6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:

(a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required from any Government Instrumentality for implementation and operation of the Project.

(b) upon written request from the Concessionaire, provide reasonable assistance to the Concessionaire in obtaining access to all necessary infrastructure facilities and utilities, including water and electricity at rates and on terms no less favourable to the Concessionaire than those generally available to commercial customers receiving substantially equivalent services;

(c) procure that no barriers are erected or placed on or about the Project Tunnel by any Government Instrumentality or persons claiming through or under it, except for reasons of Emergency, national security, law and order or collection of inter-state taxes;

(d) make best endeavours to procure that no local Tax, toll or charge is levied or imposed on the use of whole or any part of the Project Tunnel;

(e) subject to and in accordance with the Applicable Laws, grant to the Concessionaire the authority to regulate traffic on the Project Tunnel;

(f) assist the Concessionaire in procuring police assistance for regulation of traffic,removal of trespassers and security on or at the Project Tunnel;

(g) not do or omit to do any act, deed or thing which may in any manner be violativeof any of the provisions of this Agreement;

(h) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement;and

(i) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

6.2 Maintenance obligations prior to Appointed Date

During the Development Period, the Authority shall maintain the Project Tunnel, at its own cost and expense, so that its traffic worthiness and safety are at no time materiallyinferior as compared to its condition 7 (seven) days prior to the last date for submissionof the Bid, and in the event of any material deterioration or damage other than normal wear and tear, undertake repair thereof, or pay to the Concessionaire the cost and expense, as determined by the Independent Engineer, for undertaking such repair after the Appointed Date. For the avoidance of doubt, the Authority shall undertake only routine maintenance during the Development Period, and it shall undertake special repairs only for ensuring safe operation of the Project Tunnel, or in the event of excessive deterioration or damage caused due to unforeseen events such as floods or torrential rain.

6.3 Obligations relating to Competing Roads

[Deleted]

6.4 Obligations relating to refinancing

Upon request made by the Concessionaire to this effect, the Authority shall, in conformity with any regulations or guidelines that may be notified by the Government or the Reserve Bank of India, as the case may be, permit and enable the Concessionaireto secure refinancing, in whole or in part, of the Debt Due on such terms as may be agreed upon between the Concessionaire and the entity providing such refinancing; provided, however, that the refinancing hereunder shall be utilized for the Project purpose only and shall always be subject to the prior approval of the Authority, which shall not be unreasonably withheld. For the avoidance of doubt, the tenure of debt refinanced hereunder may be determined mutually between the Senior Lenders and the Concessionaire, but the repayment thereof shall be completed no later than 1(one) year prior to the expiry of Concession Period.

ARTICLE 7 REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of the Concessionaire

The Concessionaire represents and warrants to the Authority that:

(a) it is duly organised and validly existing under the laws of India, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;

(b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;

(c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;

(d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;

(e) it is subject to the laws of India, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;

(f) the information furnished in the Bid and as updated on or before the date of this Agreement is true and accurate in all respects as on the date of this Agreement;

(g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Consortium} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;

(h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;

(i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;

(j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;

(k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3 and that the {selected bidder/ Consortium Members}, together with {its/ their} Associates, hold not less than 51% (fifty-one percent) of its issued and paid up Equity as on the date of this Agreement; and that each Consortium Member whose technical and financial capacity was evaluated for the purposes of pre-qualification and short-listing in response to the Request for Proposal shall hold at least 26% (twenty six per cent) of such Equity, which shall also be not less than 5% (five percent) of the Total Project Cost during the Construction Period and one year thereafter. The period of 1 year will be reckoned from date of completion of Punch List excluding Punch List items pending due to the reasons attributable to the Authority. Provided further that any such request made under Clause 5.3,

shall at the option of the Authority, may be required to be accompanied by a suitable no objection letter from Senior Lenders.

(l) {the selected bidder/ Consortium Members and its/their} Associates have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;

(m) {the selected bidder/ each Consortium Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;

(n) all its rights and interests in the Project Tunnel shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;

(o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;

(p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith.

(q) all information provided by the {selected bidder/ Consortium Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.

(r) all undertakings and obligations of the Concessionaire arising from the Request for Proposals or otherwise shall be binding on the Concessionaire as if they form part of this Agreement.

7.2 Representations and Warranties of the Authority

The Authority represents and warrants to the Concessionaire that:

(a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein andthat it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;

(b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;

(c) it has the financial standing and capacity to perform its obligations under this Agreement;

(d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;

(e) there are no actions, suits or proceedings pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the default or breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform its obligations under this Agreement;

(f) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect onthe Authority’s ability to perform its obligations under this Agreement;

(g) it has complied with Applicable Laws in all material respects;

(h) all information provided by it in response to the Request for Qualification and Request for Proposals, including amendments thereto or disclosures thereunder, in connection with the Project is, to the best of its knowledge and belief, true and accurate in all material respects;

(i) it has the right, power and authority to manage and operate the Project Tunnel up to the Appointed Date; and

(j) it has good and valid right to the Site and has power and authority to grant a license in respect thereto to the Concessionaire.

(k) upon the Concessionaire paying the Concession Fee and performing the covenants herein, it shall not at any time during the term hereof, interfere with peaceful exercise of the rights and discharge of the obligations by the Concessionaire, in accordance with this Agreement.

7.3 Disclosure

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has beenfound to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

ARTICLE 8 DISCLAIMER

8.1 Disclaimer

8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Qualification, Request for Proposals, Scope of the Project, Specifications and Standards, Site, local conditions, physical qualities of ground, subsoil and geology, traffic volumes and all information provided by the Authority or obtained procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. Save as provided in Clause 7.2, the Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.

8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Consortium Members and their} Associates or any person claiming through or under any of them.

8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.

8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the otherParty, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.

8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall beborne by the Concessionaire and the Authority shall not be liable in any manner for suchrisks or the consequences thereof.

PART III DEVELOPMENT AND OPERATIONS

ARTICLE 9 PERFORMANCE SECURITY

9.1 Performance Security

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Construction Period, provide to the Authority no later than 180 (one hundred and eighty) days from the date of this Agreement, in the form of account payee demand draft, fixed deposit receipt, banker's cheque or an irrevocable and unconditional guarantee (e-bank guarantee) from a Bank for a sum equivalent to 3% of the Estimated Project Cost i.e., Rs 268 Crores (Rupees Two Hundred Sixty Eight Crore) in the form set forth in Schedule-F (the"**Performance Security**"). Until such time the Performance Security is provided by the Concessionaire pursuant hereto and the same comes into effect, the Bid Security shall remain in force and effect, and upon such provision of the Performance Security pursuant hereto, the Authority shall release the Bid Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 180 (onehundred and eighty) days from the date of this Agreement, the Authority may encash the Bid Security and appropriate the proceeds thereof as Damages, and thereupon all rights,privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.2 Appropriation of Performance Security

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, the Authority shall, without prejudice to its other rights and remedieshereunder or in law, be entitled to encash and appropriate the relevant amounts from thePerformance Security as Damages for such Concessionaire Default or failure to meet any Condition Precedent. Upon such encashment and appropriation from the Performance Security, the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security,and in case of appropriation of the entire Performance Security provide a fresh Performance Security, as the case may be, and the Concessionaire shall, within the timeso granted, replenish or furnish fresh Performance Security as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 37. Upon replenishment or furnishing of a fresh Performance Security, as the case maybe, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting suchCondition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security as Damages, and to terminate this Agreement in accordance with Article 37.

9.3 Release of Performance Security

The Performance Security shall remain in force and effect for a period of one year from the Appointed Date but shall be released earlier upon the Concessionaire expending on Project construction an aggregate sum that is not less than 40% (Forty per cent) of the Total Project Cost; provided, however, that the Performance Security shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Security along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Security forthwith.

ARTICLE 10 RIGHT OF WAY

10.1 The Site

The site of the Project Tunnel shall comprise the real estate described in Schedule-A and in respect of which the Right of Way shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the "**Site**"). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for Project Tunnel as set forth in Schedule-A.

10.2 License, Access and Right of Way

10.2.1 The Authority hereby grants to the Concessionaire access to the Site for carrying out anysurveys, investigations and soil tests that the Concessionaire may deem necessary duringthe Development Period, it being expressly agreed and understood that the Authority shall have no liability whatsoever in respect of survey, investigations and tests carried out or work undertaken by the Concessionaire on or about the Site pursuant hereto in the event of Termination or otherwise.

10.2.2 In consideration of the Concession Fee, this Agreement and the covenants and warranties on the part of the Concessionaire herein contained, the Authority, in accordance with the terms and conditions set forth herein, hereby grants to the Concessionaire, commencing from the Appointed Date, leave and license rights in respect of all the land (along with any buildings, constructions or immovable assets, if any, thereon) comprising the Site which is described, delineated and shown in Schedule-A hereto (the "**Licensed Premises**"), on an "as is where is" basis, free of any Encumbrances, to develop, operate and maintain the said Licensed Premises, together with all and singular rights, liberties, privileges, easements and appurtenances whatsoever to the said Licensed Premises, hereditaments or premises or any part thereofbelonging to or in any way appurtenant thereto or enjoyed therewith, for the duration ofthe Concession Period and, for the purposes permitted under this Agreement, and for no other purpose whatsoever.

10.2.3 The license, access and Right of Way granted by this Agreement to the Concessionaire shall always be subject to existing rights of way and the Concessionaire shall perform its obligations in a manner that, the existing lanes of the connecting roads to the Project Tunnel or an alternative thereof are open to traffic at all times during the Construction Period.

10.2.4 It is expressly agreed that the license granted hereunder shall terminate automatically and forthwith, without the need for any action to be taken by the Authority to terminatethe license, upon the Termination of this Agreement for any reason whatsoever. For theavoidance of doubt, the Parties expressly agree that notwithstanding any temporary or permanent structures erected on the Site by the Concessionaire or its sub-licensees, the license in respect of the Site (including the Intermodal Hubs and assets thereof) shall automatically terminate, without any further act of theParties, upon Termination of this Agreement.

10.2.5 The Concessionaire hereby irrevocably appoints the Authority (or its nominee) to be itstrue and lawful attorney, to execute and sign in the name of the Concessionaire a transfer or surrender of the license granted hereunder at any time after the Concession Period has expired or has been terminated earlier in terms hereof, a sufficient proof of which will be the declaration of any duly authorized officer of the Authority, and the Concessionaire consents to it being registered for this purpose.

10.2.6 It is expressly agreed that trees on the Site are property of the Authority except that theConcessionaire shall be entitled to exercise usufructuary rights thereon during the Concession Period.

10.3 Procurement of the Site

10.3.1 Pursuant to the notice specified in Clause 4.1.2, the Authority Representative, the Independent Engineer, and the Concessionaire shall, on a mutually agreed date and time,inspect the Site and prepare a memorandum containing an inventory of the Site includingthe vacant and unencumbered land, buildings, structures, road works, trees and any otherimmovable property on or attached to the Site. Such memorandum shall have appended thereto an appendix (the "**Appendix**") specifying in reasonable detail those parts of theSite to which vacant access and Right of Way has not been granted to the Concessionaire. Signing of the memorandum, in two counterparts (each of which shall constitute an original), by the authorised representatives of the Parties shall, subject to the provisions

of Clause 10.2.2, be deemed to constitute a valid license and Right of Way to the Concessionaire for free and unrestricted use and development of the vacant and unencumbered Site during the Concession Period under and in accordance with theprovisions of this Agreement and for no other purpose whatsoever. For the avoidance ofdoubt, it is agreed that valid license and Right of Way with respect to the parts of the Site as set forth in the Appendix shall be deemed to have been granted to the Concessionaire upon vacant access thereto being provided by the Authority to the Concessionaire.

10.3.2 Without prejudice to the provisions of Clause 10.3.1, the Parties hereto agree that on or prior to the Appointed Date, the Authority shall have granted vacant access and Right of Way for minimum 50% of the Construction Zone, so that on completion of work in this granted RoW access shall be sufficient to construct and achieve COD of the Project.The Appendix shall not include more than 50% (fifty per cent) of the remaining parts of the Construction Zone required and necessary for construction of the Project, Further inthe event of Financial Close is delayed solely on account of delay in grant of such vacantaccess and balance Construction Zone, the Authority shall be liable to payment of Damages under and in accordance with the provisions of Clause 4.2.

10.3.3 On and after signing the memorandum referred to in Clause 10.3.1, and until the Transfer Date, the Concessionaire shall maintain a round-the-clock vigil over the Site and shall ensure and procure that no encroachment thereon takes place, and in the event of any encroachment or occupation on any part thereof, the Concessionaire shall report such encroachment or occupation forthwith to the Authority and undertake its removal at its cost and expenses.

10.3.4 The Authority shall make best efforts to procure and grant, no later than 240 (two hundred forty days) days from the Appointed Date, the Right of Way to the Concessionairein respect of all land included in the Appendix, and in the event of delay for any reason beyond 240 days, the works corresponding to RoW in the Appendix not provided shall be deemed to be removed from the Scope of the Project and provisions of Clause 16.6.1shall apply in case of such works.

10.3.5 Upon receiving Right of Way in respect of any land included in the Appendix, the Concessionaire shall complete the Construction Works thereon within a reasonable period to be determined by the Independent Engineer in accordance with Good Industry Practice; provided that the issue of Provisional Certificate shall not be affected or delayed on account of vacant access to any part of the Site not being granted to the Concessionaire or any construction on such part of the Site remaining incomplete on thedate of Tests on account of the delay or denial of such access thereto. For the avoidanceof doubt, it is expressly agreed that Construction Works on all lands for which Right ofWay is granted within 240 (two hundred forty) days of the Appointed Date shall be completed before the Project Completion Date.

10.3.6 The Concessionaire shall, if so required by the Authority, procure on behalf of the Authority, on the terms and to the extent specified by the Authority, the additional landrequired for [Toll Plazas, Traffic Aid Posts, Medical Aid Posts, under passes and over passes or for] construction of works specified in Change of Scope Order issued under Article 16, in accordance with this Agreement and upon procurement, such land shall form part of the Site and vest in the Authority; provided that the Concessionaire may, by notice given to the Authority no later than 60 (sixty) days from [the Appointed Dateor the date of Change of Scope Order, as the case may be,] require the Authority to initiate and undertake proceedings for acquisition of such land and the Authority shall take all such steps as may be reasonably necessary for such land acquisition forthwith; provided further that the cost of land acquired under this Clause 10.3.6 shall be borne by the Authority in accordancewith the Act; provided also that the land to be acquired by the Authority hereunder as apart of the Site shall be deemed to be included in the Appendix referred to in this Clause 10.3 and dealt with in accordance with the provisions thereof. [For the avoidance of doubt, it is agreed that the minimum area of land to be acquired for the Toll Plazas and approach roads thereof shall conform to the provisions of Schedule - B and Schedule - C. It is further agreed that the Authority may, at any time after the Bid Date, *suo moto* acquire the land required hereunder.]

10.3.7 The Concessionaire may procure at its cost and expense and on its own the land that may be required by it for Additional Facilities and the Authority shall have no obligationor liability in respect thereof. For the avoidance of doubt, the Concessionaire shall seekprior consent of the Authority to connect any

Additional Facility to the Project Tunnel and such consent shall not be unreasonably withheld. Provided that the cost of procuring such land for construction of additional facilities shall not be the part of Financial Package and the Financial Model.

10.4 Site to be free from Encumbrances

Subject to the provisions of Clause 10.3, the Site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the Concessionaire being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such Site for the duration of the Concession Period, except insofar as otherwise expressly provided in this Agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances tothe Licensed Premises shall not be deemed to be Encumbrances. It is further agreed thatthe Concessionaire accepts and undertakes to bear any and all risks arising out of the inadequacy or physical condition of the Site.

10.5 Protection of Site from Encroachments

During the Concession Period, the Concessionaire shall protect the Site from any and alloccupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place orcreate any Encumbrance or security interest over all or any part of the Site or the ProjectAssets, or on any rights of the Concessionaire therein or under this Agreement, save andexcept as otherwise expressly set forth in this Agreement.

10.6 Special/temporary right of way

The Concessionaire shall bear all costs and charges for any special or temporary right ofway required by it in connection with access to the Site. The Concessionaire shall obtainat its cost such facilities on or outside the Site as may be required by it for the purposesof the Project Tunnel and the performance of its obligations under this Agreement.

10.7 Access to the Authority and Independent Engineer

The license, right of way and right to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority and the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement.

10.8 Geological and archaeological finds

It is expressly agreed that mining, geological or archaeological rights do not form part of the license granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interestin the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest andproperty on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest orproperty and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Government shall procure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period so as to enable the Concessionaire to continue its Construction Works with such modifications as may be deemed necessary. However, the material obtained from tunnel excavation, if suitable, may be used by the Concessionaire for refilling and restoration purposes within the Project Tunnel. The excavated material must not be used by the Concessionaire for commercial purposes. In case government land is available for the disposal of the muck/excavated material obtained from tunnel excavation, the Concessionaire must dispose the muck at these sites free of cost within the radius of 30 km, from the point of extraction including levelling.

ARTICLE 11 UTILITIES, ASSOCIATED ROADS AND TREES

11.1 Existing utilities and roads

Notwithstanding anything to the contrary contained herein, the Concessionaire shall ensure that the respective entities owning the existing roads, right of way or utilities on,under or above the Site are enabled by it to keep such utilities in continuous satisfactoryuse, if necessary, by providing suitable temporary or permanent diversions with the authority of the controlling body of that road, right of way or utility, and the Authority shall, upon written request from the Concessionaire, initiate and undertake at theConcessionaire's cost, legal proceedings for acquisition of any right of way necessary for such diversion.

11.2 Shifting of obstructing utilities

The Concessionaire shall, subject to Applicable Laws and with assistance of the Authority, undertake shifting of any utility (including electric lines, water pipes and telephone cables), to an appropriate location or alignment, if such utility or obstruction adversely affects the execution of Works or Maintenance of the Project Tunnel in accordance with this Agreement in accordancewith applicable standards and specifications of concerned utility owning entity.

The work towards shifting of utilities shall be treated as Change of Scope. The Concessionaire shall execute such utility shifting works under the supervision of utility owning agency and Independent Engineer (IE) in accordance with the provision of Agreement. The Authority will provide assistance to the Concessionaire for obtaining the estimates for shifting of such utilities from the entity owning such electric lines, water pipes or telephone cables, as the case may be. The cost of utility shifting shall be based on the estimates given by the utility-owning agencies, and shall be paid as per actuals by the Authority to the Concessionaire. Only supervision charges shall be paid by the Authority to the utility-owning entity.

In the event of any delay in shifting thereof, the Concessionaire shall be responsible for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning such electric lines, water pipes or telephone cables, as the case may be.

The dismantled material/scrap of existing Utility to be shifted/dismantled shall belong to the Concessionaire who would be free to dispose-off the dismantled material as deemed fit by them.

The work of shifting of utilities can be taken up by the Concessionaire any time after signing of the Agreement.

11.3 New utilities and roads

11.3.1 The Concessionaire shall allow, subject to such conditions as the Authority may specify,access to, and use of the Site for laying telephone lines, water pipes, electric cables or other public utilities. Where such access or use causes any financial loss to the Concessionaire, it may require the user of the Site to pay compensation or damages as per Applicable Laws. For the avoidance of doubt, it is agreed that use of the Site under this Clause shall not in any manner relieve the Concessionaire of its obligation to maintain the Project Tunnel in accordance with this Agreement and any damage caused by such use shall be restored forthwith.

11.3.2 The Authority may, by notice, require the Concessionaire to connect any adjoining roadto the Project Tunnel. Upon receipt of a notice hereunder, the connecting portion thereof falling within the Site shall be constructed by the Concessionaire at the Authority's cost in accordance with Article 16, and the maintenance thereof shall be undertaken by the Concessionaire in accordance with the provisions of Clause 17.1.3.

11.3.3 The Authority may by notice require the Concessionaire to connect, through a paved road, any adjoining service station, hotel, motel or any other public facility or amenity to the Project Tunnel, whereupon the connecting portion thereof that falls within the Site shall be constructed and maintained by the Concessionaire upon advance payment of the cost to be made by the beneficiary entity in accordance with the amount and periodas determined by the Independent Engineer. For the avoidance of doubt, any connectingroad constructed prior to the Appointed Date and falling within the Site shall be maintained by the Concessionaire upon advance payment to be made by the beneficiaryentity in accordance with the provisions of this Clause.

11.4 Felling of trees

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such treescause a material adverse effect on the construction, operation or maintenance of the Project Tunnel. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunderif such failure is a direct consequence of delay in the felling of trees. For the avoidanceof doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

11.5 Dismantling of structures

The Concessionaire shall at its own cost dismantle the structures in the acquired lands including those on patta lands, abadi lands, assigned lands, etc. the compensation for which, was paid by the Authority to the landowners and the lands were handed over tothe Concessionaire. The Concessionaire shall, at its own cost, dispose of the dismantledmaterial in its sole discretion as deemed appropriate, while complying with all environmental guidelines and regulations and clear the Site for undertaking construction.

ARTICLE 12 CONSTRUCTION OF THE PROJECT TUNNEL

12.1 Obligations prior to commencement of construction

Prior to commencement of Construction Works, the Concessionaire shall:

(a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Project in accordance with the Project Completion Schedule as set forth in Schedule-G.

(b) appoint its representative duly authorised to deal with the Authority in respect ofall matters under or arising out of or relating to this Agreement.

(c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance withthis Agreement, the Applicable Laws and Applicable Permits; and

(d) make its own arrangements for quarrying of materials needed for the Project Tunnel, as well as make arrangements for transport and disposal of excavated materials/soil/muck from the tunneling process, under and in accordance with the Applicable Laws and Applicable Permits.

12.2 Maintenance during Construction Period

During the Construction Period, the Concessionaire shall maintain, at its cost, the existing lane(s) of the Project Tunnel so that the traffic worthiness and safety thereof are at no time materially inferior as compared to their condition 7 (seven) days prior to the date of this Agreement, and shall undertake the necessary repair and maintenance works for this purpose; provided that the Concessionaire may, at its cost, interrupt and divert the flow of traffic if such interruption and diversion is necessary for the efficientprogress of Construction Works and conforms to Good Industry Practice; provided further that such interruption and diversion shall be undertaken by the Concessionaire only with the prior written approval of the Independent Engineer which approval shall not be unreasonably withheld. For the avoidance of doubt, it is agreed that the Concessionaire shall at all times be responsible for ensuring safe operation of the existing roads.

12.3 Drawings

In respect of the Concessionaire's obligations relating to the Drawings of the Project Tunnel as set forth in Schedule-H, the following shall apply:

(a) The Concessionaire shall prepare and submit, with reasonable promptness and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review.

(b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project and the Specifications and Standards.

(c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineershall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Projectand the Specifications and Standards. The Concessionaire shall not be obliged toawait the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk.

(d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Project or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings.

(e) No review and/or observation of the Independent Engineer and/or its failure to review and/or

convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner.

(f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings relating to alignment of the Project Tunnel, finished road level, location and layout of the Toll Plaza[s] and general arrangement drawings of tunnels, shafts, ramps, and the Authority shall have the right but not the obligation to undertake such review and provide its comments,if any, within 30 (thirty) days of the receipt of such Drawings. The provisions ofthis Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and

(g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shallfurnish to the Authority and the Independent Engineer a complete set of as-builtDrawings, in 2 (two) hard copies and in micro film form or in such other mediumas may be acceptable to the Authority, reflecting the Project Tunnel as actuallydesigned, engineered and constructed, including an as-built survey illustrating the layout of the Project Tunnel and setback lines, if any, of the buildings andstructures forming part of Project Facilities.

12.4 Construction of the Project Tunnel

12.4.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Project Tunnel as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 1521th (One thousand Five Hundred and Twenty-First) day from the Appointed Date shall be the scheduled date for completion of Tunnel (the "**Scheduled Completion Date**") and the Concessionaire agrees and undertakes that tunnel shall be completed on or before the Scheduled Completion Date.

12.4.2 The Concessionaire shall construct the Project Tunnel in accordance with the Project Completion Schedule set forth in Schedule-G. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 90 (ninety) days from the date set forth for such Milestone in Schedule-G, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved;

Provided that if any or all Project Milestones or the Scheduled Completion Date are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-G shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-G has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Completion Date, the Damages paid under this Clause 12.4.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.4.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

12.4.3 In the event that Project Tunnel is not completed within 270 (two hundred and seventy) days from the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

12.5 DELETED

12.6 DELETED

12.7 Construction of service roads by the Authority

The Authority shall, at any time after the [8th (eighth)] anniversary of the Appointed Date, be entitled in its discretion to undertake at its cost, construction of service roads on the Project Tunnel in accordance with the specifications and standards applicable to other district roads (ODRs) in the State. Such construction shall be undertaken withoutcausing undue disruption to traffic and upon its completion, the Concessionaire shall have the obligation to maintain the service roads in accordance with Good Industry Practice and regulate the use thereof in

accordance with the provisions of this Agreement.

12.8 Intermodal Hubs

The Concessionaire shall be responsible for the development of **three** Intermodal hubs as part of the Project. Refer Appendix 1 of Schedule B for details on the suggested minimum structure that has to be developed by the Concessionaire. The design proposed for the Intermodal Hubs is indicative and may be altered by the Concessionaire, but the final plan and layout must be approved by the Authority.

These hubs may be further developed by the Concessionaire, with prior approvals from the Authority, to generate Ancillary Revenues. Any additional cost to this effect shall be borne by the Concessionaire separately from the Project. The permitted FSI for these land parcels shall be a maximum of 5 (excluding the underground construction) as per the State's existing laws. The same shall be revised as and when changes to the State's permissible FSI are made. All necessary clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance towards these Ancillary Revenue Streams are to be acquired by the Concessionaire.

The Concessionaire shall have 100% rights on the Ancillary Revenues from the Intermodal Hubs. The land on which the intermodal hubs are developed, including all associated structures, shall be handed over to the Authority upon the termination of the Concession Period on an as-is, where-is basis.

For the construction of Intermodal Hubs, the Concessionaire may employ separate EPC contractor(s) unrelated to the Tunnel Project, without any restrictions on the size of the package of work for each EPC contractor.

ARTICLE 13 MONITORING OF CONSTRUCTION

13.1 Monthly progress reports

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority, Lenders' Representative and theIndependent Engineer a monthly report on physical and financial progress of theConstruction Works and shall promptly give such other relevant information as may berequired by the Independent Engineer. The Concessionaire shall also submit a detailed report (along with each monthly report) indicating the locations and movements of all construction vehicles by way of installing a functional Global Positioning System (GPS)in each vehicle, which shall include, but not limited to, the following information:

(i). Real- time location data of each construction vehicle.

(ii). Timestamps indicating the start and end times of vehicle movements.

(iii). Mileage covered by each vehicle.

The Concessionaire shall be responsible for ensuring the accuracy and integrity of theGPS tracking data.

13.2 Inspection

During the Construction Period, the Independent Engineer shall inspect the Project Tunnel at least once a month and make a report of such inspection (the "**Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with reference to the Scope of the Project and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven)days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever. The Authority on a written request from the Lenders' Representative shall be obliged to provide a copy of the such Inspection Report.

13.3 Tests

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer from time to time, in accordance with Good Industry Practice for quality assurance. The size of sample for such tests shall, to the extent possible, not exceed 10% (ten per cent) of the quantity and/or number of tests prescribed by IRC and/or MORTH for the construction works undertaken by theAuthority through their contractors. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shall be reimbursed by the Authority to the Concessionaire. Forthe avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defectsor deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer in this behalf. The Independent Engineer shall require the Concessionaire to carry out or cause to be carriedout tests to determine that such remedial measures have brought the Construction Worksinto compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuantto this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shallbe sent by the Concessionaire to the Independent Engineer forthwith.

13.4 Delays during construction

Without prejudice to the provisions of Clause 12.4.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonablydetermined that the rate of progress of Construction Works is such that Project Tunnel isnot likely to be achieved by the Scheduled Completion Date, it shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and submit a revised schedule asprovided in accordance with Clause 12.1 (a) for achieving the Project Milestones or Project Completion Date, as the case may be.

Further, if the Independent Engineer reports that the progress achieved in any continuousthree months is less than 75% as per the revised schedule, the Authority may invoke termination as per Clause 37.1.1 (x) of this Agreement.

13.5 Suspension of unsafe Construction Works

13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may bynotice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the persons and properties affected in the influence zone of the project tunnel, users and pedestrians. Provided, however, that in case of an emergency, the Authority may suo moto issue the notice referred to hereinabove.

13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the Users. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report tothe Authority recommending whether or not the suspension hereunder may be revoked.Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other andfurther remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.

13.5.3 Subject to the provisions of Clause 34.7, all reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the "**Preservation Costs**"), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Preservation Costs shall be borne by the Authority.

13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates setforth in the Project Completion Schedule to which the Concessionaire is reasonably entitled and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Completion Date is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Completion Date.

13.6 Video recording

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

ARTICLE 14 COMPLETION CERTIFICATE

14.1 Tests

14.1.1 At least 30 (thirty) days prior to the likely completion of the Project Tunnel, the Concessionaire shall notify the Independent Engineer of its intent to subject the Project Tunnel to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire, and notified to the Authority who may designate its representative to witness the Tests. The Concessionaireshall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shallfix the dates by not less than 10 (ten) days' notice to the Independent Engineer.

14.1.2 All Tests shall be conducted in accordance with Schedule-I. The Independent Engineershall observe, monitor and review the results of the Tests to determine compliance of the Project Tunnel with Specifications and Standards and if it is reasonably anticipatedor determined by the Independent Engineer during the course of any Test that the performance of the Project Tunnel or any part thereof does not meet the Specificationsand Standards, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and theAuthority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out tests on reflectivity of road markings, road signs and illumination levels (lux) of lighting and any additional tests, in accordance with Good Industry Practice, for determining the compliance of the Project Tunnel with Specifications and Standards.

14.2 Completion Certificate

Upon completion of Construction Works and the Independent Engineer determining theTests to be successful, it shall forthwith issue to the Concessionaire and the Authority acertificate substantially in the form set forth in Schedule-J (the "**Completion Certificate**").

14.3 Provisional Certificate

14.3.1 Subject to the provisions of Clause 14.3.2, the Independent Engineer may, at the requestof the Concessionaire, issue a provisional certificate of completion substantially in the form set forth in Schedule-J (the "**Provisional Certificate**") if the Tests are successful and the Project Tunnel can be safely and reliably placed in commercial operation though certain works or things forming part thereof are outstanding and not yet complete. In such an event, the Provisional Certificate shall have appended thereto a listof outstanding items signed jointly by the Independent Engineer and the Concessionaire (the "**Punch List**"); provided that the Independent Engineer shall not withhold the Provisional Certificate for reason of any work remaining incomplete if the delay in completion thereof is attributable to the Authority; provided further that the Punch Listshall also include the cost of completion for each of the outstanding items.

14.3.2 The Parties hereto expressly agree that a Provisional Certificate under this Clause 14.3 may, upon request of the Concessionaire to this effect, be issued for operating part of the Project Tunnel, if the Concessionaire has completed construction of 90% (Ninety per cent) of the Site made available to it up to 180 days from the Appointed Date. Upon issue of such Provisional Certificate, the provisions of Article 15 shall apply to such completed part, and the rights and obligations of the Concessionaire for and in respect of such completed part of the Project shall be construed accordingly.

14.4 Completion of Punch List items

14.4.1 All items in the Punch List shall be completed by the Concessionaire within 90 (ninety)days of the date of issue of the Provisional Certificate and for any delay thereafter, otherthan for reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to recover Damages from the Concessionaire to be calculatedand paid for each day of delay until all items are completed, at the lower of (a) 0.1% (zero point one per cent) of the Performance Security, and (b) 0.2% (zero point two percent) of the cost of completing such items as estimated by the Independent Engineer. Subject to payment of such Damages, the Concessionaire shall be entitled to a further period

not exceeding 120 (one hundred and twenty) days for completion of the Punch List items. For the avoidance of doubt, it is agreed that if completion of any item is delayed for reasons solely attributable to the Authority or due to Force Majeure, the completion date thereof shall be determined by the Independent Engineer in accordancewith Good Industry Practice, and such completion date shall be deemed to be the date of issue of the Provisional Certificate for the purposes of Damages, if any, payable for such item under this Clause 14.4.1.

14.4.2 Upon completion of all Punch List items, the Independent Engineer shall issue the Completion Certificate. Failure of the Concessionaire to complete all the Punch List items within the time set forth in Clause 14.4.1 for any reason, other than conditions constituting Force Majeure or for reasons solely attributable to the Authority, shall entitle the Authority at its discretion to get the Punch List items completed at the risk and cost of the Concessionaire or to terminate this Agreement.

14.5 Withholding of Provisional or Completion Certificate

14.5.1 If the Independent Engineer determines that the Project Tunnel or any part thereof does not conform to the provisions of this Agreement and cannot be safely and reliablyplaced in commercial operation, it shall forthwith make a report in this behalf and sendcopies thereof to the Authority and the Concessionaire within 15 (fifteen) days of conducting such tests. Upon receipt of such a report from the Independent Engineer andafter conducting its own inspection, if the Authority is of the opinion that the Project Tunnel is not fit and safe for commercial service, it shall, within 30 (thirty) days of receiving the aforesaid report, notify the Concessionaire of the defects and deficiencies in the Project Tunnel and direct the Independent Engineer to withhold issuance of theProvisional Certificate or Completion Certificate, as the case may be. Upon receipt of such notice, the Concessionaire shall remedy and rectify such defects or deficiencies andthereupon Tests shall be undertaken in accordance with this Article 14. Such procedureshall be repeated as necessary until the defects or deficiencies are rectified.

14.5.2 Notwithstanding anything to the contrary contained in Clause 14.5.1, the Authority may,at any time after receiving a report from the Independent Engineer under that Clause, direct the Independent Engineer to issue a Provisional Certificate or Completion Certificate under Clause 14.3 or 14.2 respectively, and such direction shall be compliedforthwith.

14.6 Rescheduling of Tests

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate or Provisional Certificate, as the case may be, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

ARTICLE 15 ENTRY INTO COMMERCIAL SERVICE

15.1 Commercial Operation Date (COD)

Project Tunnel shall be deemed to be complete when the Completion Certificate or the Provisional Certificate, as the case may be, is issued under the provisions of Article 14,and accordingly the commercial operation date of the Project shall be the date on whichsuch Completion Certificate or the Provisional Certificate is issued (the "**COD**"). The Project Tunnel shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to demand and collect Fee in accordance with the provisions of Article 27.

It is expressly clarified that such entitlement shall only be in respect of such part of the Project Tunnel in respect of which a Completion Certificate or Provisional Certificate, as the case may be, has been issued:

15.2 Damages for delay

Subject to the provisions of Clause 12.4, if COD does not occur prior to the 91st (ninetyfirst) day after the Scheduled Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

ARTICLE 16 CHANGE OF SCOPE

16.1 Change of Scope

16.1.1 The Authority may, notwithstanding anything to the contrary contained in this Agreement, require the provision of additional works and services which are not included in the Scope of the Project as contemplated by this Agreement or to make modifications/ alternations in the scope of works (the "**Change of Scope**"). Any such Change of Scope shall be made in accordance with the provisions of this Article 16 andthe costs thereof shall be expended by the Concessionaire and reimbursed to it by the Authority in accordance with Clause 16.3.

16.1.2 If the Concessionaire determines at any time that a Change of Scope is necessary for providing safer and improved services to the Users, it shall by notice in writing require the Authority to consider such Change of Scope. The Authority shall, within 60 (sixty) days of receipt of such notice, either accept such Change of Scope with modifications, if any, and initiate proceedings thereof in accordance with this Article 16 or inform the Concessionaire in writing of its reasons for not accepting such Change of Scope.

16.1.3 Any works or services which are provided under and in accordance with this Clause 16 shall form part of the Project Tunnel and the provisions of this Agreement shall apply mutatis mutandis to such works or services.

16.2 Procedure for Change of Scope

16.2.1 In the event of the Authority determining that a Change of Scope is necessary, it shall issue to the Concessionaire a notice specifying in reasonable detail the works and services contemplated thereunder (the "**Change of Scope Notice**").

16.2.2 Upon receipt of a Change of Scope Notice, the Concessionaire shall, with due diligence,provide to the Authority and also to Independent Engineer such information as is necessary, together with detailed proposal in support of:

(a) the impact, if any, which the Change of Scope is likely to have on the Project Completion Schedule if the works or services are required to be carried out during the Construction Period; and

(b) the options for implementing the proposed Change of Scope and the effect, if any, each such option would have on the costs and time thereof, including the following details:

(i) break-up of the quantities, unit rates and cost for different items of work; and

(ii) proposed design for the Change of Scope;

(iii) proposed modifications, if any, to the Scheduled Completion Date of the Project Tunnel.

For the avoidance of doubt, the Parties expressly agree that, subject to the provisions of Clause 16.1.2, the Change of Scope Order shall be issued for suchChange of Scope of works of the Project Tunnel.

(c) The parties agree that costs and time for implementation of the proposedChange of Scope shall be determined as follows: -

(i) For items of works where schedule of rates of concerned circle of state's public works department (NH) prevailing on the date of Change of Scope Orderare available, the same shall be applicable for determination of costs. In case of non-availability of schedule of rates for year of the prevailing date, the availableschedule of rates shall be applied by updating the same based on yearly WPI.

(ii) For item of works not included in schedule of rates as mentioned in sub- para (i) above, the cost shall be derived on the basis of MORTH standard data book and the rates given in applicable schedule of rates failing which the prevailing market rates. For any item in respect of which MORTH standard data book does not provide the requisite details, the Independent Engineer shall determine the rate in accordance with Good Industry Practice.

(iii) The costs of existing works or items, which are being changed/ modified shall also be valued as per above procedure and only net cost shall be considered.

(iv) The design charges shall be considered @ 1% (one per cent) of cost of COS. However, if COS is on net cost basis, the design charges @1% of negative COS shall not be deducted.

(v) The reasonable time for completion of works to be taken under Change of Scope shall be determined by the Independent Engineer on the basis of Good Industry Practice and if such time exceeds the Scheduled Completion Date, the issue of Completion Certificate shall not be affected or delayed on account of construction of Change of Scope items/ works remaining incomplete on the date of Tests.

(vi) If the Change of Scope leads to increase in the bituminous/concrete surface area of Project Tunnel, then only the O&M cost shall be considered.

16.2.3 Upon receipt of information set forth in Clause 16.2.2, if the Authority decides to proceed with the Change of Scope, it shall convey its preferred option to the Concessionaire, and the Parties shall, with assistance of the Independent Engineer, thereupon make good faith efforts to agree upon the time and costs for implementation thereof. Upon reaching an agreement, the Authority shall issue an order (the "**Change of Scope Order**") requiring the Concessionaire to proceed with the performance thereof.In the event that the Parties are unable to agree, the Authority may, by issuing a Changeof Scope Order, require the Concessionaire to proceed with the performance thereof pending resolution of the Dispute, or carry out the works in accordance with Clause 16.5.

16.2.4 The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works undertaken by the Concessionaire underthis Article 16.

16.3 Payment for Change of Scope

16.3.1 Within 30 (thirty) days of issuing a Change of Scope Order, the Authority shall make anadvance payment to the Concessionaire in a sum equal to 20% (twenty per cent) of the cost of Change of Scope as agreed hereunder, and in the event of a Dispute, 20% (twentyper cent) of the cost assessed by the Independent Engineer. The Concessionaire shall, after commencement of work, present to the Authority bills for payment in respect of the works in progress or completed works, as the case may be, supported by such Documentation as is reasonably sufficient for the Authority to determine the accuracy thereof. Within 30 (thirty) days of receipt of such bills, the Authority shall disburse to the Concessionaire such amounts as are certified by the Independent Engineer asreasonable and after making a proportionate deduction for the advance payment made hereunder, and in the event of any Dispute, final adjustments thereto shall be made underand in accordance with the Dispute Resolution Procedure.

16.3.2 Notwithstanding anything to the contrary contained in Clause 16.3.1, all costs arising out of any Change of Scope Order issued during the Construction Period shall be borneby the Concessionaire, subject to an aggregate ceiling of 0.25% (zero point two five percent) of the Total Project Cost. Any costs in excess of the ceiling shall be reimbursed bythe Authority in accordance with Clause 16.3.1. In the event that the total cost arising out of Change of Scope Orders (if any) issued prior to the Project Completion Date is less than 0.25% (zero point two five per cent) of the Total Project Cost, the difference thereof shall be credited by the Concessionaire to the Safety Fund within a period of 180(one hundred and eighty) days of the Project Completion Date. For the avoidance of doubt, it is agreed that the aforesaid 0.25% (zero point two five per cent) of the Total Project Cost shall, to the extent borne by the Concessionaire, be deemed to form part ofthe actual capital cost of the Project.

16.4 Restrictions on certain works

16.4.1 Notwithstanding anything to the contrary contained in this Article 16, but subject to theprovisions of Clause 16.4.2, the Authority shall not require the Concessionaire to undertake any works or services if such works or services are likely to delay completionof Project Tunnel provided that in the event that the Authority considers such works or services to be essential, it may issue a Change of Scope Order, subject to the condition that the works forming part of or affected by such Order shall not be reckoned for purposes of determining completion of Project Tunnel and issuing the Provisional Certificate.

16.4.2 Notwithstanding anything to the contrary contained in this Article 16, the Concessionaire shall be entitled to nullify any Change of Scope Order if it causes the cumulative costs relating to all the Change of Scope Orders to exceed 5% (five per cent)of the Total Project Cost in any continuous period of 3 (three) years immediately preceding the date of such Change of Scope Order or if such cumulative costs exceed 20% (twenty per cent) of the Total Project Cost at any time during the Concession Period.

16.5 Power of the Authority to undertake works

16.5.1 Notwithstanding anything to the contrary contained in Clauses 16.1.1, 16.2 and 16.3, theAuthority may, after giving notice to the Concessionaire and considering its reply thereto, award any works or services, contemplated under Clause 16.1.1, to any person on the basis of open competitive bidding; provided that the Concessionaire shall have the option of matching the first ranked bid in terms of the selection criteria, subject to payment of 2% (two per cent) of the bid amount to the Authority, and thereupon securingthe award of such works or services. For the avoidance of doubt, it is agreed that the Concessionaire shall be entitled to exercise such option only if it has participated in thebidding process and its bid does not exceed the first ranked bid by more than 10% (ten percent) thereof. It is also agreed that the Concessionaire shall provide access, assistanceand cooperation to the person who undertakes the works or services hereunder.

16.5.2 The works undertaken in accordance with this Clause 16.5 shall conform to the Specifications and Standards and shall be carried out in a manner that minimizes the disruption in the operation of the Project Tunnel. The provisions of this Agreement, insofar as they relate to Construction Works and Tests, shall apply *mutatis mutandis* to the works carried out under this Clause 16.5.

16.6 Reduction in Scope of the Project

16.6.1 (a) If the Concessionaire shall have failed to complete any Construction Works as specified in the Punch List items in accordance with Clause 14.4 and works deemed to be descoped/removed as per Clause 10.3.4, the cost of such works shall be determined as on the Bid Due Date as per the methodology provided in Clause 16.2.2 (c). Such cost shall be further multiplied by a factor of [● 1.20] and divided by Total Project Cost to arrive at the percentage (rounded upto two decimals) of incomplete works. The Concessionaire shall be liable to pay to the Authority such percentage of the Realisable Fee every month till completion of such works, in the form of an additional Concession Fee.

For the avoidance of doubt, the Total Project Cost to be reckoned for the purposes of this Clause shall include Equity Support and Construction Support.

(b) Without prejudice to the above, in case there is any reduction in effective tolling length of the Project Highway due to such incomplete work on account of Force Majeure or for reasons solely attributable to the Authority, the shortfall in Realisable Fee on this account shall be reimbursed by the Authority every month as if it would have enjoyed had such work been completed.

Punch List items shall be reviewed quarterly and on completion of all or any of the Punch List items, the percentage of incomplete work and effective tolling length shall be revised accordingly.

16.6.2 For determining the obligations of the Concessionaire under this Clause 16.6, the provisions of Clauses 16.1, 16.2 and 16.4 shall apply *mutatis mutandis*, and upon issue of Change of Scope Order by the Authority hereunder, the Concessionaire shall pay forthwith the sum specified therein.

ARTICLE 17 OPERATION AND MAINTENANCE

17.1 O&M obligations of the Concessionaire

17.1.1 During the Operation Period, the Concessionaire shall operate and maintain the Project Tunnel in accordance with this Agreement either by itself, or through the O&M Contractor and if required, modify, repair or otherwise make improvements to the Project Tunnel to comply with the provisions of this Agreement, Applicable Laws and Applicable Permits, and conform to Specifications and Standards and Good Industry Practice. The obligations of the Concessionaire hereunder shall include:

(a) permitting safe, smooth and uninterrupted flow of traffic on the Project Tunnel during normal operating conditions;

(b) collecting and appropriating the Fee;

(c) minimizing disruption to traffic in the event of accidents or other incidents affecting the safety and use of the Project Tunnel by providing a rapid and effective response and maintaining liaison with emergency services of the State;

(d) carrying out periodic preventive maintenance of the Project Tunnel;

(e) undertaking routine maintenance including prompt repairs of potholes, cracks, joints, drains, embankments, structures, pavement markings, lighting, road signsand other traffic control devices;

(f) undertaking major maintenance such as resurfacing of pavements, repairs to structures, and repairs and refurbishment of tolling system and other equipment;

(g) preventing, with the assistance of concerned law enforcement agencies, any unauthorized use of the Project Tunnel;

(h) preventing, with the assistance of the concerned law enforcement agencies, any encroachments on the Project Tunnel;

(i) protection of the environment and provision of equipment and materials therefore;

(j) operation and maintenance of all communication, control and administrative systems necessary for the efficient operation of the Project Tunnel;

(k) maintaining a public relations unit to interface with and attend to suggestions from the Users, government agencies, media and other agencies; and

(l) complying with Safety Requirements in accordance with Article 18.

(m) operation and maintenance of all Project Assets diligently and efficiently and in accordance with Good Industry Practice;

(n) maintaining punctuality and reliability in operating the Project Tunnel; and

(o) maintaining a high standard of cleanliness and hygiene on the Project Tunnel.

17.1.2 The Concessionaire shall remove promptly from the Project Tunnel all surplusconstruction machinery and materials, waste materials (including hazardous materials and wastewater), rubbish and other debris (including, without limitation, accident debris) and keep the Project Tunnel in a clean, tidy and orderly condition, and in conformity with the Applicable Laws, Applicable Permits and Good Industry Practice. [For the avoidance of doubt, it is agreed that the debris and material excavated shall be carried and disposed off by the Concessionaire.

17.1.3 The Concessionaire shall ensure that, during the Concession Period, no damage is caused to the stretches of approach roads, over-passes, under-passes or other structures situated on theSite but not forming part of the carriageway.

17.2 Maintenance Requirements

The Concessionaire shall procure that at all times during the Operation Period, the Project Tunnel conforms to the maintenance requirements set forth in Schedule-K (the "**Maintenance**

Requirements").

17.3 Maintenance Manual

17.3.1 No later than 180 (one hundred and eighty) days prior to the Scheduled Tunnel Project Tunnel Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve a repair and maintenance manual (the "**Maintenance Manual**") for the regular and preventive maintenance of the Project Tunnel in conformity with the Specifications and Standards, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies tothe Independent Engineer. The Maintenance Manual shall be revised and updated onceevery 3 (three) years and the provisions of this Clause 17.3 shall apply, *mutatis mutandis*,to such revision.

17.3.2 Without prejudice to the provision of Clause 17.3.1, the Maintenance Manual shall, in particular, include provisions for maintenance of Project Assets and shall provide for life cycle maintenance, routine maintenance and reactive maintenance which may be reasonably necessary for maintenance and repair of the Project Assets, including replacement thereof, such that their overall condition conforms to Good IndustryPractice.

17.4 Maintenance Programme

17.4.1 On or before COD and no later than 45 (forty five) days prior to the beginning of eachAccounting Year during the Operation Period, as the case may be, the Concessionaire shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the "**Maintenance Programme**") to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

(a) preventive maintenance schedule;

(b) arrangements and procedures for carrying out urgent repairs;

(c) criteria to be adopted for deciding maintenance needs;

(d) intervals and procedures for carrying out inspection of all elements of the Project Tunnel;

(e) intervals at which the Concessionaire shall carry out periodic maintenance;

(f) arrangements and procedures for carrying out safety related measures; and

(g) intervals for major maintenance works and the scope thereof.

17.4.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, MaintenanceManual and Safety Requirements.

17.4.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.4.1 and 17.4.2 shall apply*mutatis mutandis* to such modifications.

17.5 Safety, vehicle breakdowns and accidents

17.5.1 The Concessionaire shall ensure safe conditions for the Users, and in the event of unsafeconditions, lane closures, diversions, vehicle breakdowns and accidents, it shall follow the relevant operating procedures including the setting up of temporary traffic cones andlights, and removal of obstruction and debris without delay. Such procedures shall conform to the provisions of this Agreement, Applicable Laws, Applicable Permits andGood Industry Practice.

17.5.2 The Concessionaire's responsibility for rescue operations on the Project Tunnel shallbe limited to an initial response to any particular incident until such time that the competent authority takes charge and shall include prompt removal of vehicles or debrisor any other obstruction, which may endanger or interrupt the smooth flow of traffic. [For this purpose, it shall maintain and operate a round-the-clock vehicle rescue post with one mobile crane having the capacity to lift a truck with a Gross Vehicle Weight of 30,000 (thirty thousand) kilograms;

17.6 De-commissioning due to Emergency

17.6.1 If, in the reasonable opinion of the Concessionaire, there exists an Emergency which warrants de-commissioning and closure to traffic of the whole or any part of the Project Tunnel, the Concessionaire shall be entitled to de-commission and close the whole orany part of the Project Tunnel to traffic for so long as such Emergency and the consequences thereof warrant; provided that such decommissioning and particulars thereof shall be notified by the Concessionaire to the Authority without any delay, and the Concessionaire shall diligently carry out and abide by any reasonable directions thatthe Authority may give for dealing with such Emergency.

17.6.2 The Concessionaire shall re-commission the Project Tunnel or the affected part thereofas quickly as practicable after the circumstances leading to its decommissioning and closure have ceased to exist or have so abated as to enable the Concessionaire to re- commission the Project Tunnel and shall notify the Authority of the same without anydelay.

17.6.3 Any decommissioning or closure of any part of the Project Tunnel and the re- commissioning thereof shall, as soon as practicable, be brought to the notice of affected persons by means of public announcements/notice.

17.7 Lane closure

17.7.1 The Concessionaire shall not close any lane of the Project Tunnel for undertaking maintenance or repair works except with the prior written approval of the Independent Engineer. Such approval shall be sought by the Concessionaire through a written requestto be made to the Independent Engineer, and a copy thereof furnished to the Authority,at least 7 (seven) days before the proposed closure of such lane and shall be accompaniedby particulars thereof. Within 3 (three) days of receiving such request, the IndependentEngineer shall grant permission with such modifications as it may deem necessary and a copy of such permission shall be sent to the Authority.

17.7.2 The provisions of Clause 17.7.1 shall not apply to de-commissioning under Clause17.6.1 or to closure of any lane for a period not exceeding 2 (two) hours in a day at any time of the day and 6 (six) hours in a day at a time specified by the Independent Engineer as off-peak hours when the flow of traffic is comparatively lower.

17.7.3 Upon receiving the permission pursuant to Clause 17.7.1, the Concessionaire shall be entitled to close the designated lane for the period specified therein, and in the event ofany delay in re-opening such lane, the Concessionaire shall pay Damages to theAuthority calculated at the rate of 0.1% (zero point one per cent) of the Average Daily Fee for every stretch of 250 (two hundred and fifty) metres, or part thereof, for each dayof delay until the lane has been re-opened for traffic.

17.8 Damages for breach of maintenance obligations

17.8.1 In the event that the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 0.5% (zero point five per cent) of Average Daily Fee, and (b) 0.1% (zero point one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer.

Notwithstanding anything contained in this agreement, should the actual traffic exceed the design capacity, during any year or part thereof and the Concessionaire fails to repair or rectify any defect or deficiency set forth in the Maintenance Requirements within the period specified therein, it shall be deemed to be in breach of this Agreement and the Authority shall be entitled, from such date, to recover Damages, to be calculated and paid for each day of delay until the breach is cured, at the higher of (a) 5% (five per cent) of Average Daily Fee, and (b) 1% (one per cent) of the cost of such repair or rectification as estimated by the Independent Engineer, for the balance period of the concession.

Recovery of such Damages shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.

17.8.2 The Damages set forth in Clause 17.8.1 may be assessed and specified forthwith by theIndependent Engineer; provided that the Authority may, in its discretion, demand a smaller sum as Damages, if in

its opinion, the breach has been cured promptly, and the Concessionaire is otherwise in compliance with its obligations hereunder. The Concessionaire shall pay such Damages forthwith and in the event that it contests such Damages, the Dispute Resolution Procedure shall apply.

17.9 Authority's right to take remedial measures

17.9.1 In the event the Concessionaire does not maintain and/or repair the Project Tunnel or any part thereof in conformity with the Maintenance Requirements, the Maintenance Manual or the Maintenance Programme, as the case may be, and fails to commence remedial works within 15 (fifteen) days of receipt of the O&M Inspection Report or a notice in this behalf from the Authority or the Independent Engineer, as the case may be, the Authority shall, without prejudice to its rights under this Agreement including Termination thereof, be entitled to undertake such remedial measures at the risk and costof the Concessionaire, and to recover its cost from the Concessionaire. In addition to recovery of the aforesaid cost, a sum equal to 20% (twenty per cent) of such cost shall be paid by the Concessionaire to the Authority as Damages. For the avoidance of doubt,the right of the Authority under this Clause 17.9.1 shall be without prejudice to its rightsand remedies provided under Clause 17.8.

17.9.2 The Authority shall have the right, and the Concessionaire hereby expressly grants to theAuthority the right, to recover the costs and Damages specified in Clause 17.9.1 directlyfrom the Escrow Account as if such costs and Damages were O&M Expenses, and for that purpose, the Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with the instructions of the Authority under this Clause 17.9.2 and debit the same to O&M Expenses under para 4.1.1 (h) and 4.2 (d) of the Escrow Agreement.

17.10 Overriding powers of the Authority

17.10.1 If in the reasonable opinion of the Authority, the Concessionaire is in material breach ofits obligations under this Agreement and, in particular, the Maintenance Requirements,and such breach is causing or likely to cause material hardship or danger to the Users, the Authority may, without prejudice to any of its rights under this Agreement including Termination thereof, by notice require the Concessionaire to take reasonable measures immediately for rectifying or removing such hardship or danger, as the case may be.

17.10.2 In the event that the Concessionaire, upon notice under Clause 17.10.1, fails to rectify or remove any hardship or danger within a reasonable period, the Authority may exerciseoverriding powers under this Clause 17.10.2 and take over the performance of any or allthe obligations of the Concessionaire to the extent deemed necessary by it for rectifyingor removing such hardship or danger; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer duration than is reasonably required hereunder; provided further that any costs and expenses incurred bythe Authority in discharge of its obligations hereunder shall be deemed to be O&M Expenses, and the Authority shall be entitled to recover them from the Concessionaire in accordance with the provisions of Clause 17.9 along with the Damages specified therein.

17.10.3 In the event of a national emergency, civil commotion or any other act specified in Clause 34.3, the Authority may take over the performance of any or all the obligations of the Concessionaire to the extent deemed necessary by it or as directed by the Government, and exercise such control over the Project Tunnel or give such directionsto the Concessionaire as may be deemed necessary; provided that the exercise of such overriding powers by the Authority shall be of no greater scope and of no longer durationthan is reasonably required in the circumstances which caused the exercise of such overriding power by the Authority. For the avoidance of doubt, it is agreed that the consequences of such action shall be dealt in accordance with the provisions of Article 34. It is also agreed that the Concessionaire shall comply with such instructions as the Authority may issue in pursuance of the provisions of this Clause 17.10, and shall provide assistance and cooperation to the Authority, on a best effort basis, for performance of its obligations hereunder.

17.11 Restoration of loss or damage to Project Tunnel

Save and except as otherwise expressly provided in this Agreement, in the event that theProject Tunnel or any part thereof suffers any loss or damage during the Concession Period from any cause whatsoever, the Concessionaire shall, at its cost and expense, rectify and remedy such loss or damage forthwith so that the Project Tunnel conformsto the provisions of this Agreement.

17.12 Modifications to the Project Tunnel

The Concessionaire shall not carry out any material modifications to the Project Tunnel save and except where such modifications are necessary for the Project Tunnel to operate in conformity with the Specifications and Standards, Maintenance Requirements, Good Industry Practice and Applicable Laws; provided that the Concessionaire shall notify the Independent Engineer of the proposed modifications along with particulars thereof at least 15 (fifteen) days before commencing work on such modifications and shall reasonably consider any suggestions that the IndependentEngineer may make within 15 (fifteen) days of receiving the Concessionaire's proposal.

For the avoidance of doubt, all modifications made hereunder shall comply with the Specifications and Standards, Applicable Laws and the provisions of this Agreement.

17.13 Excuse from performance of obligations

The Concessionaire shall not be considered in breach of its obligations under this Agreement if any part of the Project Tunnel is not available to traffic on account of any of the following for the duration thereof:

(a) an event of Force Majeure;

(b) measures taken to ensure the safe use of the Project Tunnel except when unsafe conditions occurred because of failure of the Concessionaire to perform its obligations under this Agreement; or

(c) compliance with a request from the Authority or the directions of any Government Instrumentality, the effect of which is to close all or any part of the Project Tunnel.

Notwithstanding the above, the Concessionaire shall keep all unaffected parts of the Project Tunnel open to traffic provided they can be operated safely.

17.14 Barriers and diversions

The Authority shall procure that during the Operation Period, no barriers are erected orplaced by any Government Instrumentality on the Project Tunnel except for reasons of Emergency, national security, law and order or collection of inter-state taxes. The Authority shall also make best endeavours to procure that no Government Instrumentality shall undertake or cause to be undertaken, except for reasons of Emergency, national security or law and order, any diversions of traffic from, or closing down of approach roads to the Project Tunnel that may cause a material adverse effecton the flow of traffic to and from the Project Tunnel.

17.15 Advertising on the Site

The Concessionaire shall not undertake or permit any form of commercial advertising, display or hoarding at any place on the Site if such advertising, display or hoarding shall be visible to the Users while driving on such Highway; provided that this restriction shall not apply to the Intermodal Hubs, Toll Plaza[s], rest areas, bus shelters and telephone booths located on the Project Tunnel if the advertising thereon does not, in the opinion of the Authority, distract the Users or violates extant guidelines of MORTH. All advertising on the Project Tunnel shall also conform to Good Industry Practice. For the avoidance of doubt, it is agreed that the rights of the Concessionaire hereunder shall be subject to Applicable Laws, as in force and effect from time to time, and no compensation shall be claimed on account thereof.

ARTICLE 18 SAFETY REQUIREMENTS

18.1 Safety Requirements

18.1.1 The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Users. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on orabout the Project Tunnel, and shall comply with the safety requirements set forth in Schedule-L (the "**Safety Requirements**").

18.1.2 The Authority shall appoint an experienced and qualified firm or organization (the "**Safety Consultant**") for carrying out safety audit of the Project Tunnel in accordance with the Safety Requirements and shall take all other actions necessary for securing compliance with the Safety Requirements.

18.2 Expenditure on Safety Requirements

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works andservices included in the Scope of the Project, and works and services, if any, not formingpart of the Scope of the Project shall be undertaken in accordance with the provisions ofArticle 16. Costs and expenses on works and services not covered hitherto before and arising out of Safety Requirements shall, subject to the provisions of Clause 16.3.2, be borne from out of a dedicated safety fund (the "**Safety Fund**") to be funded, owned andoperated by the Authority or a substitute thereof.

ARTICLE 19 MONITORING OF OPERATION AND MAINTENANCE

19.1 Monthly status reports

19.1.1 During Operation Period, the Concessionaire shall, no later than 7 (seven) days after theclose of each month, furnish to the Authority and the Independent Engineer a monthly report stating in reasonable detail the condition of the Project Tunnel including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements, and shall promptly give such other relevant information as may be required by the Independent Engineer. In particular, suchreport shall separately identify and state in reasonable detail the defects and deficiencies that require rectification.

19.1.2 During Operation Period, the Concessionaire shall, no later than 10 (ten) days after the close of each month, furnish a monthly management report which shall include a summary of:

(a) key performance indicators achieved in the month, along with an analysis of reasonsfor failures, if any, and proposals to remedy the same;

(b) key operational hurdles and deliverables in the succeeding month along with strategies for addressing the same and for otherwise improving the Project Tunnel 's operational performance; and

(c) key financial parameters for the month, as benchmarked against the monthly budgetand the reasons for shortfall, if any, and proposals to remedy the same.

19.2 Inspection

The Independent Engineer shall inspect the Project Tunnel at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection. The Authority on a written request from the Lenders' Representative shall be obliged to provide a copy of the such O&M InspectionReport.

19.3 Tests

For determining that the Project Tunnel conforms to the Maintenance Requirements, the Independent Engineer shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. TheConcessionaire shall, with due diligence, carry out or cause to be carried out all such tests in accordance with the instructions of the Independent Engineer and furnish the results of such tests forthwith to the Independent Engineer. One half of the costs incurred on such tests, and to the extent certified by the Independent Engineer as reasonable, shallbe reimbursed by the Authority to the Concessionaire.

19.4 Remedial measures

19.4.1 The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth inthe O&M Inspection Report or in the test results referred to in Clause 19.3 and furnisha report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of therepair works once every week until such works are completed in conformity with this Agreement.

19.4.2 The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at its own cost, to determine that such remedial measures have broughtthe Project Tunnel into compliance with the Maintenance Requirements and the procedure set forth in this Clause 19.4 shall be repeated until the Project Tunnel conforms to the Maintenance Requirements. In the event that remedial measures are notcompleted by the Concessionaire in conformity with the provisions of this Agreement, the Authority shall be entitled to recover Damages from the Concessionaire under and in accordance with the provisions of Clause 17.8.

19.5 Monthly Fee Statement

During the Operation Period, the Concessionaire shall furnish to the Authority, within 7(seven) days

of completion of each month, a statement of Fee substantially in the form set forth in Schedule-M (the "**Monthly Fee Statement**"). The Concessionaire shall also furnish to the Authority such other information as the Authority may reasonably require,at specified intervals, in discharge of its statutory functions.

19.6 Reports of unusual occurrence

The Concessionaire shall, prior to the close of each day, send to the Authority and the Independent Engineer, by facsimile or e-mail, a report stating accidents and unusual occurrences on the Project Tunnel relating to the safety and security of the Users andProject Tunnel. A weekly and monthly summary of such reports shall also be sent within three days of the closing of each week and month, as the case may be. For the purposes of this Clause 19.6, accidents and unusual occurrences on the Project Tunnel shall include:

(a) death or injury to any person;

(b) damaged or dislodged fixed equipment; damage to any structures of the Project Tunnel.

(c) any obstruction on the Project Tunnel, which results in slow down of the servicesbeing provided by the Concessionaire;

(d) disablement of any equipment during operation;

(e) communication failure affecting the operation of Project Tunnel;

(f) smoke or fire;

(g) flooding of Project Tunnel; and

(h) such other relevant information as may be required by the Authority or the Independent Engineer.

ARTICLE 20 TRAFFIC REGULATION

20.1 Traffic regulation by the Concessionaire

The Concessionaire shall regulate traffic on the Project Tunnel in accordance with theApplicable Laws, and subject to the supervision and control of the State authorities [or a substitute thereof] empowered in this behalf under the Applicable Laws.

20.2 Police assistance

For regulating the use of Project Tunnel in accordance with the Applicable Laws andthis Agreement, the Authority shall assist the Concessionaire in procuring police assistance from the State Police Department [or a substitute thereof]. The police assistance shall include setting up of a traffic aid post (the "**Traffic Aid Post**") [at eachof the Intermodal Hubs with a mobile Police squad for round-the-clock patrolling of the Project Tunnel].

20.3 Buildings for Traffic Aid Posts

The Concessionaire shall, in accordance with the type designs prescribed for such policeoutpost buildings by [the State Government or a substitute thereof, construct buildings not exceeding 25 (twenty-five) square meters of plinth area, for each of the Traffic Aid Posts, and hand them over to the Authority no later than 60 (sixty) days prior to the Scheduled Completion Date. The Traffic Aid Post[s] shall be deemed to be part of theSite and shall vest in the Authority.

20.4 Recurring expenditure on Police assistance

[On or before the Scheduled Completion Date, the Concessionaire shall provide to theState Police Department or a substitute thereof one Jeep or similar vehicle in good working condition along with chauffeurs for round-the-clock patrolling as set forth in Clause 20.2 and shall meet the operating costs of such vehicle including the salaries andallowances of the chauffeurs. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State PoliceDepartment or a substitute thereof.]

ARTICLE 21 EMERGENCY MEDICAL AID

21.1 Medical Aid Posts

For providing emergency medical aid during the Operation Period, as set forth in this Agreement, the Concessionaire shall assist the State Government [or a substitute thereofto be designated by the Authority] in setting up and operating a medical aid post (the "**Medical Aid Post**") at [each of the Intermodal Hubs with round-the-clock ambulance services for victims of accidents on the Project Tunnel.]

21.2 Buildings for Medical Aid Posts

The Concessionaire shall, at its cost [and in accordance with the type designs prescribedfor such buildings by the State Medical Department (or a substitute thereof to be designated by the Authority), construct an aid post building and 2 (two) residential quarters, and hand them over to the Authority, no later than 30 (thirty) days prior to Scheduled Completion Date. The Medical Aid Post(s)] shall be deemed to be part of the Site and shall vest in the Authority.

21.3 Recurring expenditure on Medical Aid Posts

[On or before COD, the Concessionaire shall provide to the State Medical Department or a substitute thereof to be designated by the Authority one ambulance in good workingcondition along with chauffeurs for round-the-clock ambulance services as set forth in Clause 21.1 and meet the operating costs of such ambulance including the salaries and allowances of the chauffeurs. The Concessionaire shall also reimburse to the State Medical Department (or a substitute thereof to be designated by the Authority) the actualexpenditure incurred by it in each Accounting Year on the medical equipment, and the pay and allowances of up to 2 (two) medical personnel deployed exclusively for the Medical Aid Posts and ambulance, and shall maintain the Medical Aid Post buildings inaccordance with Good Industry Practice. For the avoidance of doubt, it is agreed that the Concessionaire shall not be liable for any other expenditure incurred by the State Medical Department or a substitute thereof to be designated by the Authority.

ARTICLE 22 TRAFFIC CENSUS

22.1 Traffic census

The Concessionaire shall install, maintain and operate electronic/computerized traffic counters at [each of] the Toll Plaza[s] and collect data relating to the number and types of vehicles using the Project Tunnel. [The Concessionaire shall also install, maintain and operate weighing platforms (weigh-in-motion type) for recording, on a sample basis,the weight of commercial goods vehicles using the Project Tunnel.] A weekly statement of such data shall be compiled and furnished forthwith by the Concessionaireto the Authority substantially in the form specified in Schedule-N.

22.2 [Deleted]

22.3 [Deleted]

22.4 Computer systems and network

The Concessionaire shall install, operate and maintain a computer system with round- the-clock connections to the networks of the Authority and other related entities for exchange of data and information useful or necessary for efficient and transparent regulation and management of traffic. For this purpose, it shall follow such protocol forElectronic Data Interchange (the "**EDI**") as the Authority may specify. For the avoidance of doubt, it is agreed that the form specified in Schedule-N may be modifiedby the Authority from time to time for conforming to the requirements and output of EDI.

ARTICLE 23 INDEPENDENT ENGINEER

23.1 Appointment of Independent Engineer

The Authority shall appoint a consulting engineering firm from a panel of 10 (ten) firmsor bodies corporate, constituted by the Authority substantially in accordance with the selection criteria set forth in Schedule-P, to be the independent consultant under this Agreement (the "**Independent Engineer**"). The appointment shall be made no later than90 (ninety) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment or appoint another firm from a fresh panel constitutedpursuant to Schedule-P to be the Independent Engineer for a term of 3 (three) years, andsuch procedure shall be repeated after expiry of each appointment.

23.2 Duties and functions

23.2.1 The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-Q.

23.2.2 A true copy of all communications sent by the Authority to the Independent Engineer and by the Independent Engineer to the Authority shall be sent forthwith by the Independent Engineer to the Concessionaire.

23.2.3 A true copy of all communications sent by the Independent Engineer to the Concessionaire and by the Concessionaire to the Independent Engineer shall be sent forthwith by the Independent Engineer to the Authority.

23.2.4 Independent Engineer shall periodically submit data on the progress/status of construction works, financial progress, and other requisite details at such interval, as mentioned in the TOR, which shall enable the Authority for updating the project-specific website, substantially in the format prescribed at Appendix of Schedule Q.

The Independent Engineer shall be responsible for tracking NPV of the collected toll revenues and thereafter make recommendations to the Authority regarding review of concession period, as and when required.

23.3 Remuneration

The remuneration, cost and expenses of the Independent Engineer shall be paid by the Authority and subject to the limits set forth in Schedule-P, one-half of such remuneration, cost and expenses shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receiving a statement of expenditure from the Authority.

23.4 Termination of appointment

23.4.1 The Authority may, in its discretion, terminate the appointment of the Independent Engineer at any time, but only after appointment of another Independent Engineer in accordance with Clause 23.1.

23.4.2 If the Concessionaire has reason to believe that the Independent Engineer is notdischarging its duties and functions in a fair, efficient and diligent manner, it may makea written representation to the Authority and seek termination of the appointment of theIndependent Engineer. Upon receipt of such representation, the Authority shall hold a tripartite meeting with the Concessionaire and Independent Engineer for an amicable resolution of the Dispute, and if any difference or disagreement between the Authority and the Concessionaire remains unresolved, the Dispute shall be settled in accordance with the Dispute Resolution Procedure. In the event that the appointment of the Independent Engineer is terminated hereunder, the Authority shall appoint forthwith another Independent Engineer in accordance with Clause 23.1.

23.5 Authorized signatories

The Authority shall require the Independent Engineer to designate and notify to the Authority and the Concessionaire up to 2 (two) persons employed in its firm to sign forand on behalf of the Independent Engineer, and any communication or document required to be signed by the Independent Engineer shall be valid and effective only if signed by any of the designated persons; provided that the Independent Engineer may, by notice in writing, substitute any of the designated persons by any of its

employees.

23.6 Dispute resolution

If either Party disputes any advice, instruction, decision, direction or award of the Independent Engineer, or, as the case may be, the assertion or failure to assert jurisdiction, the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.

23.7 Interim arrangement

In the event that the Authority does not appoint an Independent Engineer, or the Independent Engineer so appointed has relinquished its functions or defaulted in discharge thereof, the Authority may, in the interim, designate and authorize any person to discharge the functions of the Independent Engineer in accordance with the provisions of this Agreement, save and except that such person shall not exercise any functions relating to review, comment, approval or inspection as specified in this Agreement for and in respect of the Independent Engineer, and such functions shall be discharged as and when an Independent Engineer is appointed in accordance with the provisions of this Agreement:

Provided, however, that nothing contained in this Clause 23.7 shall in any manner restrict the rights of the Authority to enforce compliance of the provisions of this Agreement.

PART IV FINANCIAL COVENANTS

ARTICLE 24 FINANCIAL CLOSE

24.1 Financial Close

24.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Close within 180 (one hundred and eighty) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding [120 (one hundred and twenty)] days, subject to payment of Damages to the Authority in a sum calculatedat the rate of 0.1% (zero point one per cent) of the Performance Security for each day ofdelay; provided that the Damages specified herein shall be payable every week in advance and the period beyond the said 180 (one hundred and eighty) days shall be granted only to the extent of Damages so paid; provided further that no Damages shall be payable if such delay in Financial Close has occurred solely as a result of any defaultor delay by the Authority in procuring satisfaction of the Conditions Precedent specifiedin Clause 4.1.2 or due to Force Majeure. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, dueand payable under the provisions of Clause 4.3.

24.1.2 The Concessionaire shall, upon occurrence of Financial Close, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Close, 3 (three) true copies of the Financial Package and the Financial Model,duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of theFinancial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

24.2 Termination due to failure to achieve Financial Close

24.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 34.6.1, in the event that Financial Close does not occur, for any reason whatsoever, within the period set forth in Clause 24.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under orarising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shallbe deemed to have been terminated by mutual agreement of the Parties.

24.2.2 Upon Termination under Clause 24.2.1, the Authority shall be entitled to encash the BidSecurity and appropriate the proceeds thereof as Damages;

Provided, however, that if Financial Close has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.2, it shall, upon Termination, return the Bid Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Bid Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefroman amount equal to Bid Security.

ARTICLE 25 GRANT

25.1 Grant – [Deleted]

25.2 Equity Support: {Deleted]

25.3 O&M Support {PREMIUM} [Deleted]

25.4 Premium-[Deleted]

25.5 Construction Support

25.5.1 An amount equal to 40% of the Estimated Project Cost [Rs 3571 Crores (Rupees Three Thousand Five Hundred Seventy One Crores)] shall be due and payable to the Concessionaire in 10 (ten) equal instalments during the Construction Period in accordance with the provisions of Clause 25.5.2 (the "Construction Support").

25.5.2 Upon receiving a report from the Independent Engineer certifying the achievement of the below-mentioned Payment Milestones, the Authority shall disburse, within 15 (fifteen) days of the receipt of each such report, an instalment equal to one-tenth of the amount mentioned in Clause 25.5.1.

For the purpose of this Clause 25.5.2, the Payment Milestone for release of payment during Construction Period shall be as under:

1. **(first) Payment Milestone** - On achievement of 5% Physical Progress
2. **(second) Payment Milestone** - On achievement of 10% Physical Progress
3. **(third) Payment Milestone** - On achievement of 20% Physical Progress
4. **(fourth) Payment Milestone** - On achievement of 30% Physical Progress
5. **(fifth) Payment Milestone** - On achievement of 40% Physical Progress
6. **(sixth) Payment Milestone** - On achievement of 50% Physical Progress
7. **(seventh) Payment Milestone** - On achievement of 60% Physical Progress
8. **(eighth) Payment Milestone** - On achievement of 70% Physical Progress
9. **(ninth) Payment Milestone** - On achievement of 80% Physical Progress
10. **(tenth) Payment Milestone** - On achievement of 90% Physical Progress

Footnote: Independent Engineer, during finalization of design, shall further decide weightages of all the items in due consultation with the Authority based on the construction schedule and recommend percentage physical progress achievements based on the above decided weightages for the entire Construction Period. The weightages shall be fixed as per format in Annexure - I of Schedule G of this Agreement.

25.5.3. Subject to the conditions specified in Clause 25.5.2, the Construction Support shall be credited to the Escrow Account and shall be applied by the Concessionaire for meeting the Total Project Cost.

ARTICLE 26 CONCESSION FEE

26.1 Concession Fee

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the "**Concession Fee**") a sum of Re. 1 (Rupee one) per month.

26.2 Additional Concession Fee [Deleted]

26.3 [Deleted]

26.4 Payment of Concession Fee

The Concession Fee payable under the provisions of this Clause 26 shall be due and payable monthly . Within 7 (seven) days of the close of each month, the Concessionaire shall pay to the Authority against the Concession Fee.

26.5 Verification of Realisable Fee

26.5.1. The Authority may, in order to satisfy itself that the Concessionaire is reporting its Realisable Fee honestly and faithfully, depute its representatives to the Toll Plaza[s] and the offices of the Concessionaire, and undertake such other measures and actions as it may deem necessary, to ascertain the actual Fee revenues.

26.5.2. If the verification of Fare revenues pursuant to this Clause 26.4 demonstrates that the Realisable Fare is more than the amount reported by the Concessionaire, the Authority shall, for the purpose of determining the Fare revenues, be entitled to undertake traffic sampling for a continuous period of 7 (seven) days in accordance with Clause 22.3. The Parties hereto agree that if the average daily Fee revenue determined under this Clause 26.5.2 exceeds the average daily Realisable Fee reported by the Concessionaire during the preceding month by 1% (one percent) thereof, the difference between such Fee revenue and Realisable Fee shall be multiplied by 180 (one hundred and eighty) andthe product thereof shall be paid as Damages by the Concessionaire to the Authority, and in the event of any Dispute relating to the traffic sampling, the Dispute Resolution Procedure shall apply. For the avoidance of doubt, it is agreed that seasonal variations in traffic volume shall be determined by the Independent Engineer on the basis of past trends and other relevant information, and due weightage shall be assigned to such variations in computing the Realisable Fee under this Clause 26.5.2.

ARTICLE 27 USER FEE

27.1 Collection and appropriation of Fee

27.1.1 On and from the COD till the Transfer Date, the Concessionaire shall have the sole and exclusive right to demand, collect and appropriate Fee from the Users subject to and in accordance with this Agreement and the Karnataka Road User Fee (Determination of Rates and Collection) Rules, 2013 and in supersession of the Karnataka Private Investment Project (Road toll or user fee determination of rates and collection) notification 2009 was published as required by sub-section (1) of section 72 of the Karnataka Highways Act, 1964 (Karnataka Act 44 of 1964) in notification No. PWD 06 EAP 2012 P3, dated 26th August, 2013, published in Part IV A of the Karnataka Gazette (Extraordinary) No. 1094 dated 2101 August, 2013, inviting objections or suggestions from all the persons likely to be affected thereby, and notice was given that the said draft will be taken into consideration after thirty days from the date of its publication in the Official Gazette and its subsequent amendments up to the Bid Due Date (the "Fee Rules"); provided that for ease of payment and collection. Toll fee notified by the State Government under these rules shall be rounded off and levied in multiple of the nearest rupees five. The Parties acknowledge that a notification for levy and collection of Fee shall be issued by the Government under Section 8Aof the Act read with Rule 3 of the National Highways Fee (Determination of Rates and Collection) Rules, 2008 (the "**Fee Notification**") within 90 (ninety) days hereof, substantially in the form set forth in Schedule-R.

27.1.2 The State Government may by notification, levy fee for use of any section of State Highways, Standalone Structures forming part of the State Highways, as the case may be, in accordance with the provisions of these rules.

27.1.3 The **Parties** acknowledge and agree that upon payment of Fee, any User shall be entitled to use the Project and the **Parties** shall not place, or cause to be placed, any restriction on such use, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement.

27.1.4 The **Parties** acknowledge and agree that any User who is not liable for payment of the Fee shall be entitled to use the Project without any restrictions, except to the extent specified in any Applicable Law, Applicable Permit or the provisions of this Agreement. For the avoidance of doubt, the **Parties** hereby acknowledge that Exempted Vehicles are not liable to payment of Fee.

27.1.5 No fee shall be levied for the use of the section of State Highways, Standalone Structures as the case may be, on two wheelers, three wheelers, tractors and animal drawn vehicles, Agriculture transport vehicles.

27.1.6 Provided that three wheelers, tractors and animal drawn vehicles, Agriculture transport, Vehicles shall not be allowed to use the section of State Highways, Standalone Structures as e case may be, where a service road or alternative road is available in lieu of the said State Highways, Standalone Structures.

27.1.7 Provided further that where service road or alternative road is available and the owner, driver or the person in charge of a two-wheeler is making use of the section of State Highways, Standalone structures as the case may be, he or she shall be charges fifty percent of the fee levied on a car.

27.2 Revision of Fee

27.2.1 The Parties hereto acknowledge and agree that the Fee shall be revised annually on April 1 subject to and in accordance with the provisions of the Fee Rules; provided, as per the GoK gazette no. PWD 06 EAP 2012 (P3), Bengaluru, dated 07-03-2015.The Parties hereto acknowledge and agree that in conformity with the Fee Rules, the Feeto be levied and collected upon completion of Project Tunnel shall be revised from the Completion Date.

27.2.2 The Parties hereto acknowledge and agree that in conformity with the Fee Rules, the Fee to be levied and collected upon completion of Project Tunnel shall be revised from the Completion Date.

27.2.3 The Concessionaire hereby acknowledges and agrees that it is not entitled to any revision of Fee or other relief from the Authority or any Government Instrumentality except in accordance with the express provisions of this Agreement.

27.3 Exemption for Local Users: [Deleted]

27.4 Free use of service road [Deleted]

27.5 Discounted Fee for frequent Users

27.5.1 The Authority or the Concessionaire, as the case may be, shall, upon request from any person, issue a return pass on payment of a sum equal to 150% (one hundred and fifty per cent) of the Fee payable for the respective vehicle if it were to undertake a single one-way trip on the Project Tunnel. Such return pass shall entitle the specified vehicle to undertake a return journey between entry and exit Toll Plazas as mentioned on the pass within 24 (twenty-four) hours from the time of payment of Fee.

27.5.2 [Deleted]

27.6 Reappropriation of excess Fee: [Deleted]

27.7 Tolling Contractor

The Concessionaire may appoint a Tolling Contractor or any other person to collect the Fee for and on behalf of the Concessionaire, provided that notwithstanding such appointment, the Concessionaire shall be and remain solely liable and responsible for the collection of Fee in accordance with this Agreement and its deposit into the Escrow Account and for compliance with the provisions of this Agreement.

27.8 Fee collection points

The Concessionaire shall be entitled to charge Fee from the Users of the Project Tunnel on the basis of the distance travelled. For the purpose of implementation of User Fee collection, a closed tolling system would be adopted. Fee shall automatically be charged at the Entries & Exits using FASTag, GNSS or ANPR or other suitable system, from vehicles using the whole or part of the Project Tunnel. Provided that for preventing evasion of Fee by any vehicle circumventing the toll collecting system and using the whole or part of the Project Tunnel, the Concessionaire shall be entitled to set up at its own risk and cost, and in consultation with the Independent Engineer, its temporary or permanent Fee collection booths, as may reasonably be necessary for preventing such evasion.

Notwithstanding anything contained in this para "Fee Collection points" shall always be governed by provisions of Government of Karnataka Gazettes/notifications (Determination of Rates and Collections) Rules 2013 (the "Fee Notification") in this regard.

In order to ensure seamless toll collection and equitable distribution of revenues between the Concessionaires operating the two packages of thie North-South Twin Tunnel Project, the following provisions shall apply:

(a) Tolling Technology Selection: The technology and system architecture for toll collection shall be finalized twelve (12) months prior to the Scheduled Commercial Operation Date (COD). This decision shall be taken mutually by both the Concessionaires and the Authority.

(b) Revenue Appropriation Principles: Toll revenues collected from users shall be apportioned between the two Concessionaires in accordance with the distance traveled by each vehicle within the respective packages. The allocation shall be computed on a proportionate basis determined by the specific route taken. For illustrative purposes: If a vehicle enters the toll road at Hebbal and exits at Silk Board, and in doing so travels a distance of 'X' kilometers in Package 1 and 'Y' kilometers in Package 2, then the toll amount paid by the user shall be divided between the two Concessionaires in the ratio of X : Y.

(c) Settlement Mechanism: A detailed and mutually agreed revenue settlement mechanism governing the disbursement, reconciliation, and reporting of toll collections shall be finalized twelve (12) months prior to the COD with mutual agreement of the two Concessionaires and the Authority.

27.9 Additional charge for evasion of Fee

In the event that any vehicle uses the Project Tunnel without payment of Fee due, the Authority or the Concessionaire, as the case may be, shall be entitled to determine and collect from such vehicle the Fee due and an equivalent amount towards predetermined liquidated damages for unauthorized use of the Project Tunnel; provided that the determination and collection of such liquidated damages shall be at the risk and cost of the Concessionaire and the Authority shall not in any manner be liable on account thereof; provided that upon failure of the driver of such vehicle to pay Fee, the Concessionaire

may prevent such vehicle from using the Project Tunnel and may have such vehicle removed therefrom.

27.10 Additional fee for overloaded vehicles

Vehicles other than cars and buses shall not be allowed to travel in the Tunnel.

27.11 Display of Fee rates

27.11.1 The Concessionaire shall, 500 (five hundred) meters before the start of entry ramp and 50 (fifty) meters before the start of entry ramp, prominently display the applicable rates of Fee for information of Users approaching the Tunnel and shall also publish and display such other information in such manner as may be prescribed under the Fee Rules.

27.11.2 The Concessionaire shall, from time to time, inform the Authority of the applicable Fee and the detailed calculation thereof. Such information shall be communicated at least 15 (fifteen) days prior to the revision of Fee under and in accordance with the Fee Rules.

27.11.3 The Concessionaire shall not revise, display or collect any amounts in excess of the rates of Fee payable under Fee Notification. In the event any excess amounts are collected by or on behalf of the Concessionaire, or collect Fee during periods when it is not entitled to do so, it shall, upon receiving a notice to this effect from the Authority, deposit with the Authority such excess amounts to the Authority along with Damages equal to 200% (two hundred percent) thereof.

27.12 Fee collection through electronic devices

The Concessionaire agrees and undertakes to migrate, as its own cost and expense, to electronic toll collection by means of such methods and devices as the Authority may determine from time to time.

27.13 Real time data for toll collection

The Concessionaire shall install appropriate mechanism to ensure that a real time data of traffic count and corresponding revenue collection shall be shared with the Authority at all times during the Operations period.

ARTICLE 28 REVENUE SHORTFALL LOAN

28.1 Revenue Shortfall Loan

28.1.1 If the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenueas a result of an Indirect Political Event, a Political Event or an Authority Default, as thecase may be, the Authority shall, upon request of the Concessionaire, provide a loan formeeting such shortfall (the "**Revenue Shortfall Loan**") at an interest rate equal to 2% (two per cent) above the Bank Rate.

28.1.2 If the half-yearly results of the Concessionaire indicate that the shortfall referred to in Clause 28.1.1 and contemplated for an Accounting Year has arisen in respect of the first6 (six) months thereof, the Concessionaire shall be entitled to a provisional Revenue Shortfall Loan; provided that, no later than 60 (sixty) days after the close of such Accounting Year, the Concessionaire shall either repay the provisional loan with interestor adjust it against the Revenue Shortfall Loan, if any, as may be due to it under this Clause 28.1.

Provided further if the Realisable Fee in any Accounting Year shall fall short of the Subsistence Revenue as a result of a judicial pronouncement not related to the default ofthe concessionaire the Authority shall, upon request of the Concessionaire, provide "Revenue Shortfall Loan" at an interest rate equal to 2% (two percent) above the Bank Rate. The entire surplus cash, after meeting the subsistence expenditure shall be used forrepayment of such Revenue Shortfall Loan.

28.1.3 The Authority shall disburse the Revenue Shortfall Loan or the provisional Revenue Shortfall Loan, as the case may be, within 60 (sixty) days of receiving a valid request from the Concessionaire along with the particulars thereof including a detailed accountof the Indirect Political Event, Political Event or the Authority Default, as the case maybe, and its impact on the collection of Fee.

28.2 Repayment of Revenue Shortfall Loan

A sum equal to 50% (fifty per cent) of the 'profit before tax' of the Concessionaire, as and when made, shall be earmarked for repayment of the Revenue Shortfall Loan and interest thereon, and paid by the Concessionaire to the Authority within 90 (ninety) daysof the close of the Accounting Year in which such profits have been made; provided thatthe Concessionaire shall repay the entire Revenue Shortfall Loan and interest thereon nolater than one year prior to the expiry of the Concession Period and in the event that anysum remains due or outstanding at any time during such period of one year, the Authority shall be entitled to terminate this Agreement forthwith. For the avoidance of doubt, it isagreed that the repayment of Revenue Shortfall Loan shall be in accordance with and subject to the provisions of Article 31.

ARTICLE 29 EFFECT OF VARIATIONS IN TRAFFIC GROWTH

29.1 Effect of variations in traffic growth

In case the Actual Traffic is higher or lower compared to the Expected Traffic, the Concession Period shall be reviewed and updated as per Clause 3.1.1 (A).

29.1.1 –[Deleted]

29.2 Modification in the Concession Period [Deleted]

ARTICLE 30 CONSTRUCTION OF ADDITIONAL TOLLWAY

30.1 Restriction on construction of Additional Tollway [Deleted]

30.2 Modification in the Concession Period: [Deleted]

30.3 Minimum Fee for the Project Tunnel [Deleted]

30.4 Minimum Fee for Additional Tollway [Deleted]

ARTICLE 31 ESCROW ACCOUNT

31.1 Escrow Account

31.1.1 The Concessionaire shall, prior to the Appointed Date, open and establish an Escrow Account with a Bank (the "**Escrow Bank**") in accordance with this Agreement read withthe Escrow Agreement.

31.1.2 The nature and scope of the Escrow Account are fully described in the agreement (the "**Escrow Agreement**") to be entered into amongst the Concessionaire, the Authority, the Escrow Bank and the Senior Lenders through the Lenders' Representative, which shall be substantially in the form set forth in Schedule-S.

31.1.3 The Escrow Bank shall also provide to the Authority the facility for online viewing anddownloading the account statement of Escrow Account at all times during the Concession Period.

31.2 Deposits into Escrow Account

The Concessionaire shall deposit or cause to be deposited the following inflows and receipts into the Escrow Account:

(a) all funds constituting the Financial Package;

(b) all Fee and any other revenues from or in respect of the Project Tunnel, including the proceeds of any rentals, deposits, capital receipts or insurance claims; and

(c) all payments by the Authority, after deduction of any outstanding Concession Fee:

Provided that the Senior Lenders may make direct disbursements to the EPC Contractorin accordance with the express provisions contained in this behalf in the Financing Agreements.

31.3 Withdrawals during Concession Period

31.3.1 The Concessionaire shall, at the time of opening the Escrow Account, give irrevocable instructions, by way of an Escrow Agreement, to the Escrow Bank instructing, *inter alia*,that deposits in the Escrow Account shall be appropriated in the following order every month, or at shorter intervals as necessary, and if not due in a month, then appropriated proportionately in such month and retained in the Escrow Account and paid outtherefrom in the month when due:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project Tunnel;

(b) all payments relating to construction of the Project Tunnel, subject to and in accordance with the conditions, if any, set forth in the Financing Agreements;

(c) O&M Expenses, subject to the ceiling, if any, set forth in the Financing Agreements;

(d) O&M Expenses and other costs and expenses incurred by the Authority in accordance with the provisions of this Agreement, and certified by the Authorityas due and payable to it;

(e) Concession Fee due and payable to the Authority;

(f) monthly proportionate provision of Debt Service due in an Accounting Year;

(g) [deleted]

(h) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan; Concessionaire hereby agrees to give irrevocable instructions to the Escrow Bank to make payment from the Escrow Account in accordance with theinstructions of the Authority under Clause 17.9.2 and debit the same to O&M Expenses.

(i) monthly proportionate provision of debt service payments due in an AccountingYear in respect of Subordinated Debt;

(j) any reserve requirements set forth in the Financing Agreements; and

(k) balance, if any, in accordance with the instructions of the Concessionaire.

31.3.2 The Concessionaire shall not in any manner modify the order of payment specified in Clause 31.3.1, except with the prior written approval of the Authority.

31.4 Withdrawals upon Termination

31.4.1 Notwithstanding anything to the contrary contained in this Agreement, all amounts standing to the credit of the Escrow Account shall, upon Termination, be appropriated in the following order:

(a) all taxes due and payable by the Concessionaire for and in respect of the Project Tunnel;

(b) outstanding Concession Fee;

(c) 90% (ninety per cent) of Debt Due excluding Subordinated Debt;

(d) all payments and Damages certified by the Authority as due and payable to it by the Concessionaire, including repayment of Revenue Shortfall Loan and any claims in connection with or arising out of Termination;

(e) retention and payments relating to the liability for defects and deficiencies setforth in Article 39;

(f) outstanding Debt Service including the balance of Debt Due;

(g) outstanding Subordinated Debt;

(h) incurred or accrued O&M Expenses;

(i) any other payments required to be made under this Agreement; and

(j) balance, if any, in accordance with the instructions of the Concessionaire:

Provided that no appropriations shall be made under Sub-clause (j) of this Clause 31.4.1until a Vesting Certificate has been issued by the Authority under the provisions of Article 38.

31.4.2 The provisions of this Article 31 and the instructions contained in the Escrow Agreementshall remain in full force and effect until the obligations set forth in Clause 31.4.1 havebeen discharged.

31.5 Monitoring of the Escrow Account

The Escrow Bank shall, within 30 (thirty) days of close of each month from the date of opening of the Escrow Account, provide the Authority monthly statements setting out the deposits made in and the withdrawals made from the Escrow Account in the preceding month. Notwithstanding the submission of the monthly statements by the Escrow Bank, the Authority shall be given full access, at all times, to all documents in relation to deposits made in and withdrawals made from the Escrow Account till expiry of the Concession Period.

ARTICLE 32 INSURANCE

32.1 Insurance during Concession Period

32.1.1 The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums not less thanthe engineering, procurement and construction cost as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Construction Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance into the Escrow Account. For the avoidance of doubt, thelevel of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

32.1.2 Without prejudice to the above provisions, the Concessionaire shall, after the COD, procure and maintain Insurance Cover including but not limited to the following:

(a) Loss, damage or destruction of the Project Assets, including assets handed over by the Authority to the Concessionaire, at replacement value;

(b) Comprehensive third-party liability insurance including injury to or death of personnel of the Authority or others caused by the Project;

(c) The Concessionaire's general liability arising out of the Concession;

(d) Liability to third parties for goods or property damage;

(e) Workmen's compensation insurance; and

(f) any other insurance that may be necessary to protect the Concessionaire and its employees, including all Force Majeure Events that are insurable at commercially reasonable premiums and not otherwise covered in items(a) to (e) above.

32.2 Notice to the Authority

No later than 45 (forty-five) days prior to commencement of the Construction Period orthe Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, information in respect of the insurances that it proposes to effect and maintain in accordance with this Article 32. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the eventof any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

32.3 Evidence of Insurance Cover

All insurances obtained by the Concessionaire in accordance with this Article 32 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15(fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insuranceshall be cancelled, modified, or allowed to expire or lapse until the expiration of at least45 (forty five) days after notice of such proposed cancellation, modification or non- renewal has been delivered by the Concessionaire to the Authority.

32.4 Remedy for failure to insure

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

32.5 Waiver of subrogation

All insurance policies in respect of the insurance obtained by the Concessionairepursuant to this Article 32 shall include a waiver of any and all rights of subrogation orrecovery of the insurers thereunder against, *interalia*, the Authority, and its assigns, successors, undertakings and their subsidiaries, affiliates, employees, insurers andunderwriters, and of any right of the insurers to any set-off or counterclaim or any otherdeduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability orobligation covered by such policies of insurance.

32.6 Concessionaire's waiver

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters,which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

32.7 Application of insurance proceeds

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire by credit to the Escrow Account and it shall, notwithstanding anything to the contrary contained in Clause 31.3, apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of theProject Tunnel, and the balance remaining, if any, shall be applied in accordance withthe provisions contained in this behalf in the Financing Agreements.

ARTICLE 33 ACCOUNTS AND AUDIT

33.1 Audited accounts

33.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (includingall Realisable Fees and other revenues derived/collected by it from or on account of theProject Tunnel and/or its use), income, expenditure, payments (including payments from the Escrow Account), assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 180 (one hundred and eighty) days of the close of the Accounting Year to which they pertain andsuch audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.

33.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by the Securities and ExchangeBoard of India for publication of quarterly results by the companies listed on a stock exchange.

33.1.3 On or before the thirty-first day of May each Year, the Concessionaire shall provide to the Authority, for the preceding Accounting Year, a statement duly audited by its Statutory Auditors giving summarised information on (a) the traffic count for each category of vehicles using the Project Tunnel and liable for payment of Fee therefor,

(b) Fee charged and received, Realisable Fee and other revenues derived from the Project Tunnel, and (c) such other information as the Authority may reasonably require.

33.2 Appointment of auditors

33.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement asits Statutory Auditors, a firm chosen by it from the mutually agreed list of 10 (ten) reputable firms of chartered accountants (the "**Panel of Chartered Accountants**"), such list to be prepared substantially in accordance with the criteria set forth in Schedule-T. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.

33.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.

33.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the "**Additional Auditors**") as may be decided by the Authorityto audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

33.2.4 The Authority shall have the right, but not the obligation, to appoint at its cost, for the duration of the Construction Period, another firm (the "**Concurrent Auditors**") as maybe decided by the Authority to undertake concurrent audit of the Concessionaire's accounts.

33.3 Certification of claims by Statutory Auditors

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its StatutoryAuditors. For the avoidance of doubt, such certification shall not be required forexchange of information in the normal course of business including the submission of Monthly Fee Statements under Clause 19.5.

33.4 Set-off

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any

sums payable to it by the Concessionaire and pay the balance remaining.Any exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

33.5 Dispute resolution

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification providedby the Statutory Auditors, such Auditors shall meet to resolve the differences and if theyare unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

PART V FORCE MAJEURE AND TERMINATION

ARTICLE 34 FORCE MAJEURE

34.1 Force Majeure

As used in this Agreement, the expression "**Force Majeure**" or "**Force Majeure Event**" shall mean occurrence in India of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 34.2, 34.3 and 34.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the "**Affected Party**") of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

34.2 Non-Political Event

A Non-Political Event shall mean one or more of the following acts or events:

(a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);

(b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project Tunnel for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 34.3;

(c) any failure or delay of a Contractor but only to the extent caused by another Non- Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;

(e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through an independent evaluation of the ground, subsoil and geology, including any implications arising out of geological risks; or

(f) any event or circumstances of a nature analogous to any of the foregoing.

34.3 Indirect Political Event

An Indirect Political Event shall mean one or more of the following acts or events:

(a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

(b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;

(c) any civil commotion, boycott or political agitation which prevents collection of Fee by the Concessionaire for an aggregate period exceeding 7 (seven) days in an Accounting Year;

(d) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;

(e) any Indirect Political Event that causes a Non-Political Event; or

(f) any event or circumstances of a nature analogous to any of the foregoing.

(g) any political or economic upheaval, disturbance, movement, struggle or similar occurrence which could not have been anticipated or foreseen by a prudent person and which causes the construction or operation of the Project to be financially unviable or otherwise not feasible.

34.4 Political Event

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

(a) Change in Law, only if it causes reduction in traffic and consequent increase in Concession Period is beyond 20% of the Concession Period as per Clause 29.2.1 and the Concessionaire invokes the event;

(b) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;

(c) unlawful or unauthorized or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, license, permit, authorization, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements;

Provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, license, authorizations, no objection certificate, exemption, consent, approval or permit;

(d) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or

(e) any event or circumstance of a nature analogous to any of the foregoing.

34.5 Duty to report Force Majeure Event

34.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

(a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 34 with evidence in support thereof;

(b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;

(c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and

(d) any other information relevant to the Affected Party's claim.

34.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

34.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 34.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

34.6 Effect of Force Majeure Event on the Concession

34.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 24.1.1 for achieving Financial Close shall be extended by a period equal in length to the duration of the Force Majeure Event.

34.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

(a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or

(b) after COD, whereupon the Concessionaire is unable to collect Fee despite making best efforts or it is directed by the Authority to suspend the collection thereof during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from collection of Fee on account thereof; Provided that in the event of partial collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty-five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

34.7 Allocation of costs arising out of Force Majeure

34.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

34.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "**Force Majeure Costs**") shall be allocated and paid as follows:

(a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;

(b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and

(c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, upon occurrence of a Force Majeure Event after the Appointed Date till the achievement of COD, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include loss of Fee revenues or debt repayment obligations, and such Force Majeure Costs shall be determined as under:

(i) escalation on value of incomplete work to be determined on the basis of variation in WPI from the initial date set forth for the Scheduled [Six-Laning] Date in Schedule G till achievement of COD, proportionately for the period of delay attributable to the Force Majeure Event;

(ii) prolongation costs equal to 8% of value of incomplete work multiplied by the period of delay attributable to the Force Majeure Event divided by the period specified in Clause 12.4.1;

(iii) interest on Debt Due for the period of delay attributable to the Force Majeure Event;

(iv) Cost of maintenance of existing road as determined from original Financing Agreements for the period of delay attributable to the Force Majeure Event;

For the avoidance of doubt, the incomplete work shall mean the incomplete work attributable only to the Force Majeure Event. The value of such work shall be assessed as on the Bid Due Date by Independent Engineer as per the methodology provided in Clause 16.2.2 (c).

Provided, upon occurrence of a Force Majeure Event after the COD till Transfer Date, Force Majeure Costs may include (a) interest on Debt Due and (b) O&M expenses as determined from original Financing Agreements.

34.7.2 Save and except as expressly provided in this Article 34, neither Party shall be liable in any manner

whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

34.8 Termination Notice for Force Majeure Event

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 34, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; Provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

34.9 Termination Payment for Force Majeure Event

34.9.1 If Termination is on account of a Non-Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover.

34.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:

(a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and

(b) 110% (one hundred and ten per cent) of the Adjusted Equity.

34.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 37.3.2 as if it were an Authority Default.

34.10 Dispute resolution

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

34.11 Excuse from performance of obligations

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

(a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and

(c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

ARTICLE 35 COMPENSATION FOR BREACH OF AGREEMENT

35.1 Compensation for default by the Concessionaire

Subject to the provisions of Clause 35.6 and 37.6, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof;

Provided that no compensation shall be payable under this Clause 35.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

35.2 Compensation for default by the Authority

Subject to the provisions of Clause 35.6 and 37.6, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date till achievement of COD, it shall pay to the Concessionaire by way of compensation, for the direct costs suffered or incurred by the Concessionaire and loss of Fee revenues but shall not include debt repayment obligations as a consequence of such material default or breach within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable directly attributable to such material breach shall be worked out as under:

i) escalation on value of incomplete work to be determined on the basis of variation in WPI from the initial date set forth for the Scheduled Completion Date in Schedule G till achievement of COD, proportionately for the period of delay attributable to the Authority.

ii) Prolongation costs equal to 8% of value of incomplete work multiplied by the period of delay attributable to the Authority divided by the period specified in Clause 12.4.1.

iii) loss of Fee revenues for the period of delay attributable to the Authority arrived at by multiplying such period with 90% of Average Daily Fee of one year period immediately following the COD. This amount, without any interest, shall be payable within 60 days from end of one year period following the COD.

For the avoidance of doubt, the incomplete work shall mean the incomplete work attributable only to the Authority. The value of such work shall be assessed as on the Bid Due Date by the Independent Engineer as per the methodology provided in Clause 16.2.2 (c).

Provided however, in the event of the Authority being in material default or breach of this Agreement at any time after the achievement of COD, the provision of Clause 35.3 shall be applicable.

35.3 Compensation and extension of Concession Period for default by the Authority

Subject to the provisions of Clause 35.6, in the event a material default or breach of this Agreement at any time after achievement of COD or leads to suspension of or reduction in collection of Fee, as the case may be, the Authority shall, in addition to payment of compensation for such period of suspension or reduction, comprising of (a) interest on Debt Due and (b) O&M expenses as determined from the original Financing Agreements, extend the Concession Period. Such extension being equal in duration to the period for which the collection of Fee remained suspended on account thereof,; and in the event of reduction in collection of Fee where the daily collection is less than 90% (ninety per cent) of the Average Daily Fee, the Authority shall, extend the Concession Period in proportion to the loss of Fee on a daily basis. For the avoidance of doubt, loss of 25% (twenty five per cent) in collection of Fee as compared to the Average Daily Fee for four days shall entitle the Concessionaire to extension of one day in the Concession Period.

35.4 Compensation for Competing Roads [Deleted]

35.5 Compensation to be in addition

Compensation payable under this Article 35 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

35.6 Mitigation of costs and damage

The Party not in breach shall make all reasonable effort to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

ARTICLE 36 SUSPENSION OF CONCESSIONAIRE'S RIGHTS

36.1 Suspension upon Concessionaire Default

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under thisAgreement including the Concessionaire's right to collect Fee, and other revenues pursuant hereto, and (ii) exercise such rights itself and perform the obligations hereunderor authorize any other person to exercise or perform the same on its behalf during such suspension (the "**Suspension**"). Suspension hereunder shall be effective forthwith uponissue of notice by the Authority to the Concessionaire and may extend up to a period notexceeding 180 (one hundred and eighty) days from the date of issue of such notice;

Provided that upon written request from the Concessionaire and the Lenders' Representative, the Authority shall extend the aforesaid period of 180 (one hundred andeighty) days by a further period not exceeding 90 (ninety) days.

36.2 Authority to act on behalf of Concessionaire

36.2.1 During the period of Suspension, the Authority shall, on behalf of the Concessionaire, collect all Fee and revenues under and in accordance with this Agreement and deposit the same in the Escrow Account. The Authority shall be entitled to make withdrawals from the Escrow Account for meeting the costs incurred by it for remedying and rectifying the cause of Suspension, and thereafter for defraying the expenses specified in Clause 31.3.

36.2.2 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordancewith this Agreement and the Project Agreements, shall be deemed to have been done ortaken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period.The Concessionaire hereby licenses and sub-licenses respectively, the Authority or any other person authorised by it under Clause 36.1 to use during Suspension, all Intellectual Property belonging to or licensed to the Concessionaire with respect to the Project Tunnel andits design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

36.3 Revocation of Suspension

36.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

36.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

36.4 Substitution of Concessionaire

At any time during the period of Suspension, the Lenders' Representative, on behalf ofSenior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder fromthe Lenders' Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under Clause 36.1, for enabling the Lenders' Representative toexercise its rights of substitution on behalf of Senior Lenders.

36.5 Termination

36.5.1 At any time during the period of Suspension under this Article 36, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution inaccordance with the provisions of this

Agreement and within the period specified in Clause 36.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 37.

36.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event thatSuspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 36.1, theConcession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Noticehad been issued by the Authority upon occurrence of a Concessionaire Default.

ARTICLE 37 TERMINATION

37.1 Termination for Concessionaire Default

37.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default ofthis Agreement (the "**Concessionaire Default**"), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

(a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;

(b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;

(c) the Concessionaire does not achieve the latest outstanding Project Milestone duein accordance with the provisions of Schedule-G and continues to be in default for 90 (ninety) days;

(d) the Concessionaire abandons or manifests intention to abandon the constructionor operation of the Project Tunnel without the prior written consent of the Authority;

(e) Project Completion Date does not occur within the period specified in Clause 12.4.3;

(f) the Punch List items have not been completed within the period set forth in Clause 14.4.1;

(g) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;

(h) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;

(i) an Escrow Default has occurred and the Concessionaire fails to cure the defaultwithin a Cure Period of 15 (fifteen) days;

(j) upon occurrence of a Financial Default, the Lenders' Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;

(k) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;

(l) the Concessionaire creates any Encumbrance in breach of this Agreement;

(m) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;

(n) a Change in Ownership has occurred in breach of the provisions of Clause5.3;

(o) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a MaterialAdverse Effect;

(p) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;

(q) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assetsthat has a material bearing on the Project;

(r) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the

Authority, a Material Adverse Effect;

(s) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdictionand a provisional liquidator or receiver is appointed and such order has not beenset aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction;

Provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferredto the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:

(i) the amalgamated or reconstructed entity has the capability and operatingexperience necessary for the performance of its obligations under this Agreement and the Project Agreements;

(ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaireas at the Appointed Date; and

(iii) each of the Project Agreements remains in full force and effect;

(t) any representation or warranty of the Concessionaire herein contained which is,as of the date hereof, found to be materially false, incorrect or misleading or theConcessionaire is at any time hereafter found to be in breach thereof;

(u) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;

(v) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or

(w) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on theAuthority.

(x) the Concessionaire fails in achieving the rate of progress as per revised schedulein accordance with Clause 13.4 of this Agreement.

(y) the Concessionaire fails to transport, dispose or manage the excavated soil/earth/muck as per the Applicable Laws and Rules of the State Government, as well as the guidelines of the State Pollution Control Board.

(z) the Concessionaire develops, operates or maintains the Project Assets (including the Intermodal Hubs) in a manner not approved by the Authority or not as per the Applicable Laws and Rules of the concerned Government entities.

37.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shallby a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may afterthe expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 37.1.3.

37.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 37.1.2 to inform the Lenders' Representative and grant 30 (thirty) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and

eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the SeniorLenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curingthereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred andeighty) days by such further period not exceeding 90 (ninety) days, as the Authority maydeem appropriate.

37.2 Termination for Authority Default

37.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 90 (ninety) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "**Authority Default**") unless the defaulthas occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

(a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect onthe Concessionaire;

(b) the Authority has failed to make any payment to the Concessionaire within the period specified in this Agreement;

(c) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by thisAgreement; or

(d) The State commits a material default in complying with the provisions of the State Support Agreement if such default has a Material Adverse Effect on the Concessionaire and the breach continues for a period of 90 (ninety) days from the date of notice given in this behalf by the Concessionaire to the Authority.

37.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority;

Provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 30 (thirty) days to the Authority to make a representation, and may after the expiry of such 30 (thirty) days, whether or not it is in receipt of such representation, issue the Termination Notice.

37.2 A. **Termination on Buy Back by the Authority** [Deleted]

37.3 Termination Payment

37.3.1 Upon Termination on account of a Concessionaire Default on or after COD, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to 90% (ninety per cent) of the Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due. For the avoidance of doubt, the Concessionaire hereby acknowledges that no Termination Payment shall be due or payable on account of a Concessionaire Default occurring prior to COD save and except in accordance with Clause 37.8.

37.3.2 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:

(a) Debt Due; and

(b) 150% (one hundred and fifty per cent) of the Adjusted Equity.

Provided that the Termination Payment shall not be less than an amount equal to the product of 6 (six)

and the average monthly Fee actually realised 12 (twelve) months prior to the Transfer Date.

37.3.2 A. [deleted]

37.3.3 Termination Payment shall become due and payable to the Concessionaire within30 (thirty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at arate equal to 3% (three per cent) above the Bank Rate on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.

37.3.4 The Concessionaire expressly agrees that Termination Payment under this Article 37 shall constitute a full and final settlement of all claims of the Concessionaire on accountof Termination of this Agreement for any reason whatsoever and that the Concessionaireor any shareholder thereof shall not have any further right or claim under any law, treaty,convention, contract or otherwise.

37.4 Other rights and obligations of the Authority

Upon Termination for any reason whatsoever, the Authority shall:

(a) be deemed to have taken possession and control of the Project Tunnel (including the Intermodal Hubs) forthwith;

(b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;

(c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;

(d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 38.1; and

(e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under suchProject Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

37.5 Survival of rights

Notwithstanding anything to the contrary contained in this Agreement, but subject to theprovisions of Clause 37.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights andobligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

37.6 Limitation of Liability

Neither Party shall be liable to the other for any loss of profit, loss of business, loss of production, loss of contracts or for any indirect or other consequential loss or damage whatsoever that may be suffered by the other Party, except to the extent that such consequential loss or damage is attributable to gross negligence, deliberate default, fraud, fraudulent misrepresentation or wilful misconduct by the

defaulting Party, its personnel or agents.

The aggregate liability of either Party, under or in connection with the Agreement other than those provided under Clause 37.7of this Agreement, shall not exceed [one hundred percent (100%)] of the Total Project Cost. Provided however, the aggregate liability of the Authority under Clause 37.3 of this Agreement, shall not exceed one hundred fifteen percent (115%) of the Total Project Cost.

37.7 Mutual foreclosure

37.7.1 Without prejudice to any provision of this Agreement, the Authority and Concessionairemay foreclose this Agreement by mutual consent in circumstances which does not constitute any Party's default. Such a foreclosure can occur in any of the following 2 (two) categories as per the mutual consent of the Authority and the Concessionaire:

a. Type A Foreclosure: Foreclosure with mutual consent without any liability or consequential future liability for either Party

b. Type B Foreclosure: Foreclosure with mutual consent with compensation to the Concessionaire including any pending settlements / claims as per the provisions under Clause 37.7.2

37.7.2 Should a Party intend to foreclose this Agreement by mutual consent, the intending Partyshall issue a notice to the other Party and upon issuance of such notice, the other Party may within a reasonable time-frame either agree to such foreclosure or raise objection(s)to the same by intimating either of the two possible positions to the intending Party in writing.

37.7.3 In either case of the other Party agreeing to the proposed foreclosure or otherwise, and with prior written approval of the Lenders' Representative, the Parties may negotiate theterms and conditions of the Mutual Foreclosure Agreement and this Agreement shall stand terminated upon execution of the Mutual Foreclosure Agreement

37.7.4 In the event the Parties mutually agree to foreclose this Agreement as a Type B Foreclosure under Clause 37.7.1, the Authority shall be liable to compensate theConcessionaire as per the provisions under Clause 37.7.3.

37.7.5 Any attempt or endeavour for foreclosure by mutual agreement under this clause shall,subject to the rights and obligations of the Parties surviving under this Clause, be without prejudice to the rights and obligations of the Parties herein and the factum of such an attempt or exercise shall not stop either of the Parties from discharging their contractual obligations under this Agreement. For the avoidance of doubt, it is agreed that all the rights, claims, and obligations of either party arising under this Agreement shall cease upon execution of the Mutual Foreclosure Agreement hereunder.

37.7.6 For the avoidance of doubt, it is clarified that such foreclosure shall not affect the Concessionaire in any way if it wishes to bid in future projects of the Authority.

37.8 Stuck Projects:

37.8.1 Upon Termination on account of Concessionaire Default occurring prior to COD, no Termination Payment shall be due and payable if Physical Progress is less than 40% (forty per cent), and in the event of Physical Progress exceeding 40% (forty per cent), the provisions of Clause 37.3.1 shall, to the extent applicable to Debt Due, apply in respect of the expenditure exceeding 40% (forty per cent) of Total Project Cost. For theavoidance of doubt and by way of illustration, the Parties agree that if the totalexpenditure incurred prior to Termination is 90% (ninety per cent) of the Total Project Cost, the expenditure eligible for computation of Termination Payment hereunder shallbe 50% (fifty per cent) of the Total Project Cost and the Termination Payment due and payable in such event shall not exceed 45% (forty-five per cent) of the Total Project Cost. The Parties further agree that for the purposes of this Clause 37.8, Total Project Cost shall mean the amount specified in Sub-clause (c) of the definition of Total ProjectCost in Clause 48.1. The Parties also agree that for determining the Termination Payment under this Clause 37.8, the expenditure comprising the latest Payment Milestone shall also be reckoned.

37.9 Continuity upon Termination

In case of Termination under Clause 37 and notwithstanding pendency of any judicial/quasi-judicial proceedings, the Authority, in accordance with its responsibility of developing and maintaining "in

proper repair all national highways" under Section 5of The National Highways Act, 1956, in public interest, may appoint/engage another contractor to execute or complete the Project with or without appropriate changes or modifications. Such an appointment or engagement shall be without prejudice to Concessionaire's liabilities and obligations under Clause 39 and similar such clauses. In case termination of this Agreement is found to be invalid or untenable pursuant to legal or quasi-judicial proceedings, the Authority shall put the Concessionaire to the same financial position as if such termination had never happened.

ARTICLE 38 DIVESTMENT OF RIGHTS AND INTEREST

38.1 Divestment Requirements

38.1.1 Upon Termination, the Concessionaire shall comply with and conform to the followingDivestment Requirements:

(a) notify to the Authority forthwith the location and particulars of all Project Assets.

(b) deliver forthwith the actual or constructive possession of the Project Tunnel, free and clear of all Encumbrances, save and except to the extent set forth in theSubstitution Agreement.

(c) cure all Project Assets, including the road, bridges, structures and equipment, ofall defects and deficiencies so that the Project Tunnel is compliant with the Maintenance Requirements;

Provided that in the event of Termination during theConstruction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition.

(d) deliver and transfer relevant records, reports, Intellectual Property and other licenses pertaining to the Project Tunnel and its design, engineering, construction, operation and maintenance, including all programmes and manualspertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for thedesign, engineering, construction, operation and maintenance of the Project Tunnel and shall be assigned to the Authority free of any encumbrance.

(e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws.

(f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all therights, title and interest of the Concessionaire in the Project Tunnel, includingmanufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to theAuthority, absolutely unto the Authority or its nominee; and

(g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project Tunnel, free from all Encumbrances, absolutely unto the Authority or to its nominee.

38.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

38.2 Inspection and cure

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) daysprior to the effective date of such Termination, the Independent Engineer shall verify, after giving due notice to the Concessionaire of the time, date and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, andif required, cause appropriate tests to be carried out at the Concessionaire's cost for thispurpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 39 shall apply, *mutatis mutandis*, in relation to curing of defects or deficiencies under this Article 38.

38.3 Cooperation and assistance on transfer of Project

38.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisionsof this Agreement so as to protect the safety of and avoid undue delays or inconvenienceto the Users, other members of the public or the lawful occupiers of any part of the Site.

38.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in theevent of Termination by efflux of time and immediately in the event of either Party conveying to the other

Party its intent to issue a Termination Notice, as the case may be,as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. TheConcessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for the operation of the Projectuntil the expiry of 6 (six) months after the Transfer Date.

38.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fairmarket value and free from any encumbrance all or any part of the plant and machineryused in connection with the Project, but which does not form part of the assets specifiedin Clause 38.1.1 and is reasonably required in connection with operation of the Project.For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

38.4 Vesting Certificate

The divestment of all rights, title and interest in the Project Tunnel shall be deemed tobe complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificatesubstantially in the form set forth in Schedule-U (the "**Vesting Certificate**"), which willhave the effect of constituting evidence of divestment by the Concessionaire of all of itsrights, title and interest in the Project Tunnel, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project Tunnel on the footing that all Divestment Requirements have been complied with by the Concessionaire.

38.5 Additional Facilities

Notwithstanding anything to the contrary contained in this Agreement, all Additional Facilities shall continue to vest in the Concessionaire upon and after Termination.

The Intermodal Hubs and all assets thereof are part of the Project Tunnel and shall be treated accordingly, and not as Additional Facilities.

38.6 Divestment costs etc.

38.6.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project Tunnel in favour of the Authority upon Termination, save and except that all stamp duties payable on any deedsor Documents executed by the Concessionaire in connection with such divestment shallbe borne by the Authority.

38.6.2 In the event of any dispute relating to matters covered by and under this Article 38, theDispute Resolution Procedure shall apply.

ARTICLE 39 DEFECTS LIABILITY AFTER TERMINATION

39.1 Liability for defects after Termination

The Concessionaire shall be responsible for all defects and deficiencies in the Project Tunnel for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficienciesobserved by the Independent Engineer in the Project Tunnel during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project Tunnel conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen)days of receipt of demand thereof, and in the event of default in reimbursing such costs,the Authority shall be entitled to recover the same from the Escrow Account.

39.2 Retention in Escrow Account

39.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to theprovisions of Clause 39.2.3, a sum equal to 5% (five per cent) of the total Realisable Feefor the year immediately preceding the Transfer Date shall be retained in the Escrow Account for a period of 120 (one hundred and twenty) days after Termination for meeting the liabilities, if any, arising out of or in connection with the provisions of Clause 39.1.

39.2.2 Without prejudice to the provisions of Clause 39.2.1, the Independent Engineer shall carry out an inspection of the Project Tunnel at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the Termination and if it recommends that the status of the Project Tunnel is such that a sum larger than the amount stipulated in Clause 39.2.1 should be retained in the Escrow Account and for a period longer than the aforesaid 120 (one hundred and twenty) days, the amount recommended by the Independent Engineer shall be retained in the Escrow Account forthe period specified by it.

39.2.3 The Concessionaire may, for the performance of its obligations under this Article 39, provide to the Authority a guarantee from a Bank for a sum equivalent to the amount determined under Clause 39.2.1 or 39.2.2, as the case may be, and for the period specified therein, substantially in the form set forth in Schedule-F (the "Performance Guarantee"), to be modified, mutatis mutandis, for this purpose, and the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 39. Upon furnishing of a Performance Guarantee under this Clause 39.2.3, the retention of funds in the Escrow Account in terms of Clause 39.2.1 or 39.2.2, as the case may be, shall be dispensed with.

PART VI OTHER PROVISIONS

ARTICLE 40 ASSIGNMENT AND CHARGES

40.1 Restrictions on assignment and charges

40.1.1 Subject to Clauses 40.2 and 40.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning anyreason.

40.1.2 Subject to the provisions of Clause 40.2, the Concessionaire shall not create nor permitto subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which theConcessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

40.2 Permitted assignment and charges

The restraints set forth in Clause 40.1 shall not apply to:

(a) liens arising by operation of law (or by an agreement evidencing the same) in theordinary course of business of the Project Tunnel;

(b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, a charge on the Escrow account arising or createdin the ordinary course of business of the Project Tunnel and a charge on Receivables of the Concessionaires as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project Tunnel;

(c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the SubstitutionAgreement as security for financing provided by Senior Lenders under the Financing Agreements; and

(d) liens or encumbrances required by any Applicable Law.

40.3 Substitution Agreement

40.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authorityand the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-V.

40.3.2 Upon substitution of the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire or the Selected Bidder/Consortium Members of the Concessionaire, shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire;

Provided that where the Concessionaire is in breach of this Agreementon the date of such substitution, the Authority shall by notice grant a Cure Period of 120(one hundred and twenty) days to the Concessionaire for curing such breach.

40.4 Assignment by the Authority

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its rights and benefits and/or obligations under this Agreement to an assignee whois, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority'sthen outstanding obligations under this Agreement.

ARTICLE 41 CHANGE IN LAW

41.1 Increase in costs

If as a result of Change in Law, the Concessionaire suffers an increase in costs or otherfinancial burden, the aggregate financial effect of which exceeds the higher of Rs. 15 crore (Rupees fifteen crore) and 0.5% (zero-point five percent) of the Realisable Fee in any Accounting Year, the Concessionaire may so notify the Authority and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in thecost increase or other financial burden as aforesaid. Upon notice by the Concessionaire,the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) daysfrom the date of notice, and either agree on amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice, the Concessionaire may by notice require the Authority to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice,along with particulars thereof, the Authority shall pay the amount specified therein;

Provided that if the Authority shall dispute such claim of the Concessionaire, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidanceof doubt, it is agreed that this Clause 41.1 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

Provided however, if as a result of Change in Law, there is reduction in traffic, the consequences thereof shall be dealt with under and in accordance with the provision of Clause 29.2.1.

41.2 Reduction in costs

If as a result of Change in Law, the Concessionaire benefits from a reduction in costs orother financial gains, the aggregate financial effect of which exceeds the higher of Rs. 1crore (Rupees one crore) and 0.5% (zero-point five percent) of the Realisable Fee in anyAccounting Year, the Authority may so notify the Concessionaire and propose amendments to this Agreement so as to place the Concessionaire in the same financial position as it would have enjoyed had there been no such Change in Law resulting in thedecreased costs or other financial gains as aforesaid. Upon notice by the Authority, the Parties shall meet, as soon as reasonably practicable but no later than 30 (thirty) days from the date of notice, and either agree on such amendments to this Agreement or on any other mutually agreed arrangement:

Provided that if no agreement is reached within 90 (ninety) days of the aforesaid notice,the Authority may by notice require the Concessionaire to pay an amount that would place the Concessionaire in the same financial position that it would have enjoyed had there been no such Change in Law, and within 15 (fifteen) days of receipt of such notice, along with particulars thereof, the Concessionaire shall pay the amount specified thereinto the Authority; provided that if the Concessionaire shall dispute such claim of the Authority, the same shall be settled in accordance with the Dispute Resolution Procedure. For the avoidance of doubt, it is agreed that this Clause 41.2 shall be restricted to changes in law directly affecting the Concessionaire's costs of performing its obligations under this Agreement.

Provided however, if as a result of Change in Law, there is increase in traffic, the consequences shall be dealt with under and in accordance with the provision of Clause 29.2.2.

41.3 Protection of NPV [Deleted]

41.4 Restriction on cash compensation

41.5 The Parties acknowledge and agree that the demand for cash compensation under this Article 41 shall be restricted to the effect of Change in Law during the respective Accounting Year and shall be made at any time after commencement of such year, but no later than one year from the close of such Accounting Year. Any demand for cash compensation payable for and in respect of any subsequent Accounting Year shall be made after the commencement of the Accounting Year to which the demand pertains, but no later than two years from the close of such Accounting Year.

41.6 No claim in the event of recovery from Users

Notwithstanding anything to the contrary contained in this Agreement, the Authority shall not in any manner be liable to reimburse to the Concessionaire any sums on accountof a Change in Law if the same are recoverable from the Users.

ARTICLE 42 LIABILITY AND INDEMNITY

42.1 General indemnity

42.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the "**Authority Indemnified Persons**") against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of anybreach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of servicesby the Concessionaire to any User or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act oromission, or breach or default of this Agreement on the part of the Authority IndemnifiedPersons.

42.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or

(ii) breach by the Authority of any of its obligations under this Agreement or any relatedagreement, which materially and adversely affect the performance by the Concessionaireof its obligations under this Agreement, save and except that where any such claim, suit,proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

42.2 Indemnity by the Concessionaire

42.2.1 Without limiting the generality of Clause 42.1, the Concessionaire shall fully indemnify,hold harmless and defend the Authority and the Authority Indemnified Persons from andagainst any and all loss and/or damages arising out of or with respect to:

(a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;

(b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire's contractors, suppliers and representatives; or

(c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its contractors which are payable by the Concessionaire or any of its contractors.

42.2.2 Without limiting the generality of the provisions of this Article 42, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons fromand against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringementof any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information, design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related tothe Project. If in any such suit, action, claim or proceedings, a temporary restraint orderor preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspensionof the injunction or restraint order. If, in any such suit, action, claim or proceedings, theProject Tunnel, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a license, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such license within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace theaffected work, or part, or process thereof with non-infringing work or part or process, ormodify the same so that it becomes non-infringing.

42.3 Notice and contest of claims

In the event that either Party receives a claim or demand from a third party in respect ofwhich it is entitled to the benefit of an indemnity under this Article 42 (the "**IndemnifiedParty**") it shall notify the other Party (the "**Indemnifying Party**") within 30 (thirty) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or disputethe claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

42.4 Defense of claims

The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 42, the Indemnifying Party shall be entitled, at its option, to assume and control the defense of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defense. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.

42.4.1 If the Indemnifying Party has exercised its rights under Clause 42.3, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not beunreasonably withheld or delayed).

42.4.2 If the Indemnifying Party exercises its rights under Clause 42.3, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

(a) the employment of counsel by such party has been authorized in writing by the Indemnifying Party; or

(b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party inthe conduct of the defense of such action; or

(c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defense of such action and shall have been so notified by the Indemnified Party; or

(d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:

(i) that there may be specific defenses available to it which are differentfrom or additional to those available to the Indemnifying Party; or

(ii) that such claim, action, suit or proceeding involves or could have amaterial adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 42.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defense of such claim,demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or otherexpenses hereunder.

42.5 No consequential claims

Notwithstanding anything to the contrary contained in this Article 42, the indemnities herein

provided shall not include any claim or recovery in respect of any cost, expense,loss or damage of an indirect, incidental or consequential nature, including loss of profit,except as expressly provided in this Agreement.

42.6 Survival on Termination

The provisions of this Article 42 shall survive Termination.

ARTICLE 43 RIGHTS AND TITLE OVER THE SITE

43.1 Licensee rights

For the purpose of this Agreement, the Concessionaire shall have rights to the use of theSite as sole licensee subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project Tunnel by third parties in accordance with and subject to the provisions of this Agreement.

43.2 Access rights of the Authority and others

43.2.1 The Concessionaire shall allow free access to the Site at all times for the authorized representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorized by any Government Instrumentality to inspect the Project Tunnel or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such personsreasonable assistance necessary to carry out their respective duties and functions.

43.2.2 The Concessionaire shall, for the purpose of operation and maintenance of any utility orroad specified in Article 11, allow free access to the Site at all times for the authorized persons and vehicles of the controlling body of such utility or road.

43.3 Property taxes

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

Property Tax for the Intermodal Hubs and assets thereof shall be payable by the Concessionaire.

43.4 Restriction on sub-letting

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, saveand except as may be expressly set forth in this Agreement;

Provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project Tunnel.

ARTICLE 44 DISPUTE RESOLUTION

44.1 Dispute resolution

44.1.1 In the event of any dispute, difference or controversy of whatever nature howsoever arising under or out of or in relation to this Agreement (including its interpretation) between the Parties and so notified in writing by either Party to the other Party (the "**Dispute**") either Party may call upon the Independent Engineer, to mediate and assist the Parties in arriving at an amicable settlement thereof.

44.1.2 The Parties agree to use their best efforts for resolving all Disputes arising under or in respect of this Agreement promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.

44.2 Conciliation

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof.

Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Managing Director B-SMILE in accordance with the procedure set forth in Schedule-S to the Concession Agreement.

If either the Authority or the Concessionaire is dissatisfied with any decision of the Managing Director B-SMILE , and/or if the Managing Director B-SMILE is unable to resolve the dispute, either Party may require such Dispute to be referred to the Chairman, B-SMILE to the Authority and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than [7 (seven)] days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the [7 (seven)] day period or the Dispute is not amicably settled within [15 (fifteen)] days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within [30 (thirty)] days of the notice in writing or such longer period as may be mutually agreed by the Parties, either Party may approach the Court of Law in Bengaluru jurisdiction.

44.3 Arbitration - Deleted

44.4 Adjudication by Regulatory Authority or Commission

In the event of constitution of a statutory regulatory authority or commission with powers to adjudicate upon disputes between the Concessionaire and the Authority, all Disputes arising after such constitution shall, instead of reference to arbitration under Clause 44.3, be adjudicated upon by such regulatory authority or commission in accordance with the Applicable Law and all references to Dispute Resolution Procedure shall be construed accordingly. For the avoidance of doubt, the Parties hereto agree that the adjudication hereunder shall not be final and binding until an appeal against such adjudication has been decided by an appellate tribunal or High Court, as the case may be, or no such appeal has been preferred within the time specified in the Applicable Law.

ARTICLE 45 DISCLOSURE

45.1 Disclosure of Specified Documents

The Concessionaire shall make available for inspection by any person, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the "**Specified Documents**"), free of charge, during normal business hours on all working days at the Toll Plaza[s] and Concessionaire's Registered Office. The Concessionaire shall prominently display at [each of] the Toll Plaza[s] and toll booths, public notices statingthe availability of the Specified Documents for such inspection and shall provide copiesof the same to any person upon payment of copying charges on a 'no profit no loss' basis.

45.2 Disclosure of Documents relating to safety

The Concessionaire shall make available for inspection by any person copies of all Documents and data relating to safety of the Project Tunnel, free of charge, during normal business hours on all working days, at the Concessionaire's Registered Office. The Concessionaire shall make copies of the same available to any person upon paymentof copying charges on a 'no profit no loss' basis.

45.3 Withholding disclosure of Protected Documents

Notwithstanding the provisions of Clauses 45.1 and 45.2, the Authority shall be entitledto direct the Concessionaire, from time to time, to withhold the disclosure of Protected Documents (as defined hereinbelow) to any person in pursuance of the aforesaidClauses.

Explanation:

The expression Protected Documents shall mean such of the Specified Documents or documents referred to in Clauses 45.1 and 45.2, or portions thereof, the disclosure of which the Authority is entitled to withhold under the provisions of the Right toInformation Act, 2005.

ARTICLE 46 REDRESSAL OF PUBLIC GRIEVANCES

46.1 Complaints Register

46.1.1 The Concessionaire shall maintain a public relations office at each of the Toll Plazas where it shall keep a register (the "**Complaint Register**") open to public access at all times for recording of complaints by any person (the "**Complainant**"). Information relating to the availability of and access to the Complaint Register shall be prominentlydisplayed by the Concessionaire at each Toll Plazas so as to bring it to the attention of all Users.

46.1.2 The Complaint Register shall be securely bound and each page thereof shall be duly numbered. It shall have appropriate columns including the complaint number, date, name and address of the Complainant, substance of the complaint and the action taken by the Concessionaire. Immediately after a complaint is registered, the Concessionaire shall give a receipt to the Complainant stating the date and complaint number.

46.1.3 Without prejudice to the provisions of Clauses 46.1.1 and 46.1.2, the Authority may, inconsultation with the Concessionaire, specify the procedure for making complaints in electronic form and for responses thereto.

46.2 Redressal of complaints

46.2.1 The Concessionaire shall inspect the Complaint Register every day and take prompt andreasonable action for redressal of each complaint. The action taken shall be briefly notedin the Complaint Register and a reply stating the particulars thereof shall be sent by theConcessionaire to the Complainant under a certificate of posting.

46.2.2 Within 7 (seven) days of the close of each month, the Concessionaire shall send to the Authority and to the Independent Engineer a true photocopy each of all the pages of theComplaint Register on which any entry has been recorded during the course of such month, and upon perusal thereof, the Authority may, in its discretion, advise theConcessionaire to take such further action as the Authority may deem appropriate for afair and just redressal of any grievance. The Concessionaire shall consider such advice and inform the Authority of its decision thereon, and if the Authority is of the opinion that the Complainant is entitled to further relief, it may refer the matter to the competentforum for its disposal under the Consumer Protection Act, 1986, and advise the Complainant to pursue the complaint at his own risk and cost.

ARTICLE 47 MISCELLANEOUS

47.1 Governing law and jurisdiction

This Agreement shall be construed and interpreted in accordance with and governed bythe laws of India, and the courts at Bengaluru shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

47.2 Waiver of immunity

Each Party unconditionally and irrevocably:

(a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;

(b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Partywith respect to its assets;

(c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction;and

(d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, propertyor revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

47.3 State Support Agreement [Deleted]

47.4 Depreciation and Interest

47.4.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to beacquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

47.4.2 Unless otherwise specified, any interest payable under this Agreement shall accrue on a daily outstanding basis and shall be compounded on the basis of quarterly rests.

47.5 Delayed payments

The Parties hereto agree that payments due from one Party to the other Party under the provisions of this Agreement shall be made within the period set forth therein, and if nosuch period is specified, within 30 (thirty) days of receiving a demand along with the necessary particulars. In the event of delay beyond such period, the defaulting Party shallpay interest for the period of delay calculated at a rate equal to 4% (four per cent) abovethe Bank Rate, and recovery thereof shall be without prejudice to the rights of the Partiesunder this Agreement including Termination thereof.

47.6 Waiver

47.6.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations underthis Agreement: -

(a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;

(b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and

(c) shall not affect the validity or enforceability of this Agreement in any manner.

47.6.2 Neither the failure by either Party to insist on any occasion upon the performance of theterms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemedas waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

47.7 Liability for review of Documents and Drawings

Except to the extent expressly provided in this Agreement:

(a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operationor maintenance of the Project Tunnel nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and

(b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a)above.

47.8 Exclusion of implied warranties etc.

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between theParties or any representation by either Party not contained in a binding legal agreementexecuted by both Parties.

47.9 Survival

47.9.1 Termination shall:

(a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and

(b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations orliabilities for loss or damage to the other Party arising out of, or caused by, actsor omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

47.9.2 All obligations surviving Termination shall only survive for a period of 3 (three)yearsfollowing the date of such Termination.

47.10 Entire Agreement

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior writtenor oral understandings, offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties heretoagree that any obligations of the Concessionaire arising from the Request for Proposals,as the case may be, shall be deemed to form part of this Agreement and treated as such.

47.11 Severability

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearlyas is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise.

47.12 No partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

47.13 Third Parties

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person nota Party to this Agreement.

47.14 Successors and Assigns

This Agreement shall be binding upon, and inure to the benefit of the Parties and their respective successors and permitted assigns.

47.15 Notices

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

a. in the case of the Concessionaire, be given by facsimile or e-mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Bengaluru may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile or e-mail to the number as the Concessionaire may from time to time designate by notice to the Authority,

b. in the case of the Authority, be given by facsimile or e-mail and by letter delivered by hand and be addressed to the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire;

   Provided that if the Concessionaire does not have an office in Bangalore, it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and to the Concessionaire;

c. any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when, in the normal course of post, it ought to have been delivered and in all other cases, it shall be deemed to have been delivered on the actual date and time of delivery:

   Provided that in the case of facsimile or e-mail, it shall be deemed to have been delivered on the working day following the date of its delivery.

47.16 Supplementary Agreement

The Parties agree that the Parties may execute a Supplementary Agreement novating anyterms and conditions of this Agreement.

47.17 Language

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to thisAgreement shall be in writing and in English language.

47.18 Counterparts

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

ARTICLE 48 DEFINITIONS

48.1 Definitions

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

"**Accounting Year**" means the financial year commencing from the first day of April ofany calendar year and ending on the thirty-first day of March of the next calendar year;

"**Additional Facilities**" means the facilities such as service stations, motels, restaurants,shopping areas and amusement parks which the Concessionaire may, in its discretion and subject to Applicable Laws, provide or procure for the benefit of the Users, and which are in addition to the Project Facilities, and not situated on the Site;

"**Additional Termination Payment**" means the amount, if any, payable upon Termination by the Authority, as set out in 37.4.2 and 37.4.3;

"**Additional Tollway**" shall have the meaning set forth in Clause 30.1.1;

"**Adjusted Depreciated Value**" means the amount arrived at after adjusting the depreciated book value of an asset (as stated in the books of account of the Concessionaire, save and except, in the case of buildings and permanent structures where the depreciated book value shall be determined by applying an annual depreciation rate of 3% (three percent) based on the written down value method) to reflect the variation occurring in WPI between the date of purchase thereof and the Transfer Date;

"**Adjusted Equity**" means the Equity funded in Indian Rupees and adjusted on the firstday of the current month (the "**Reference Date**"), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in WPI, and forany Reference Date occurring:

(a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity fundedin Indian Rupees and expended on the Project, revised to the extent of one half of the variation in WPI occurring between the first day of the month of AppointedDate and the Reference Date.

(b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to theAdjusted Equity as on COD shall be deemed to be the base (the "**Base AdjustedEquity**") and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in WPI occurring between COD and the Reference Date.

(c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.33% (zero point threethree per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to theextent of variation in WPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding theTransfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of WPI shall continue to be made; "**Affected Party**" shall have the meaning set forth in Clause 34.1;

"**Agreement**" or "**Concession Agreement**" means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

"**Appendix**" shall have the meaning set forth in Clause 10.3.1;

"**Applicable Laws**" means all laws, brought into force and effect by GOI or the State Government including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights andobligations of the Parties hereunder, as may be in force and effect during the subsistenceof this Agreement;

"**Applicable Permits**" means all clearances, licenses, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under

Applicable Laws in connection with the construction, operation and maintenance of the Project Tunnel during the subsistence of this Agreement;

"**Appointed Date**" means the date of fulfilment of all Conditions Precedents, to be declared by the Authority with the consent of the Concessionaire and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt,every Condition Precedent shall have been satisfied prior to the Appointed Date, save and except those specified in Clause 4.1.2 (b) and Clause 4.1.2 (d), which may be waivedby the Authority for the purpose of declaration of Appointed Date.;

"**Approved Valuer**" means a firm of valuers recognized as such by the Income Tax Department and having experience of valuing at least 5 (five) properties exceeding Rs. 100,00,00,000 (Rupees one hundred crore) each in value;

"Arbitration" - Deleted

"**Arbitration Act**" means the Arbitration and Conciliation Act, 1996 and shall include modifications to or any re-enactment thereof, as in force from time to time;

"**Associate**" or "**Affiliate**" means, in relation to either Party {and/or Consortium Members}, a person who controls, is controlled by, or is under the common control withsuch Party {or Consortium Member} (as used in this definition, the expression "control"means, with respect to a person which is a company or corporation, the ownership, directly or indirectly, of more than 25% (twenty five per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person, whether by operation of law or bycontract or otherwise);

"**Authority**" means the B-SMILE;

"**Authority Default**" shall have the meaning set forth in Clause 37.2.1;

"**Authority Representative**" means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include anyperson or persons having authority to exercise any rights or perform and fulfil any

obligations of the Authority under this Agreement;

"**Average Daily Fee**" means the amount arrived at after dividing the total Realisable Fee of the immediately preceding Accounting Year by 365 (three hundred and sixty-five), and increasing the result thereof by 5% (five per cent);

provided that the Average Daily Fee for any period prior to completion of the first Accounting Year following COD shall be a simple average of the Fee collected every day during the period between COD and the last day of the month preceding the date onwhich the event requiring calculation hereof occurred, and in the event that the Fee payable by any segment of traffic has not been realised for any reason, an assessment thereof shall be made by the Independent Engineer to form part of the Average Daily Fee for such period;

"**Bank**" means a bank incorporated in India and having a minimum net worth of Rs. 1,000 crore (Rupees one thousand crore) "**Bank Rate**" means the rate of interestspecified by the Reserve Bank of India from time to time in pursuance of section 49 of the Reserve Bank of India Act, 1934 or any replacement of such Bank Rate for the timebeing in effect;

"**Bid**" means the documents in their entirety comprised in the bid submitted by the {selected bidder/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

"**Bid Security**" means the security provided by the Concessionaire to the Authority along with the Bid in a sum of **(0.5% of the Estimated Project Cost)*** Crore. (Rupees ***** Only), in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

"**Bus**" means any passenger motor vehicle with a registered carrying capacity exceeding32 (thirty-two), excluding the driver;

"**COD**" or "**Commercial Operation Date**" shall have the meaning set forth in Clause 15.1;

"**Car**" means and includes any mechanical vehicle being alight motor vehicle, car, jeep,van, omnibus, or three-wheeled motor vehicle with a Gross Vehicle Weight not exceeding 7,500 (seven thousand five hundred) kilograms or a registered carrying capacity not exceeding 12 (twelve), excluding the driver, but does not include a Motor Cycle, Tractor or road roller;

"**Change in Law**" means the occurrence of any of the following after the date of Bid that have a direct effect on the Project:

(a) the enactment of any new Indian law;

(b) the repeal, modification or re-enactment of any existing Indian law;

(c) the commencement of any Indian law which has not entered into effect until thedate of Bid;

(d) a change in the interpretation or application of any Indian law by a judgement ofa court of record which has become final, conclusive and binding, as compared to such interpretation or application by a court of record prior to the date of Bid;or

(e) any change in the rates of any of the Taxes;

"**Change in Ownership**" means a transfer of the direct and/or indirect legal or beneficialownership of any shares, or securities convertible into shares, that causes the aggregateholding of the {selected bidder/Consortium Members}, together with {its/their} Associates, in the total Equity to decline below 51% (fifty one per cent) thereof during Construction Period and one years thereafter; provided that any material variation (as compared to the representations made by the Concessionaire during the bidding processfor the purposes of meeting the minimum conditions of eligibility or for evaluation of its application or Bid, as the case may be,) in the proportion of the equity holding of {theselected bidder/any Consortium Member} to the total Equity, if it occurs prior to completion of a period one years after COD, shall constitute Change in Ownership;

"Change of Scope" shall have the meaning set forth in Clause 16.1;

"**Change of Scope Notice**" shall have the meaning set forth in Clause 16.2.1;

"**Change of Scope Order**" shall have the meaning set forth in Clause 16.2.3;

"**Commercial Sub-Account**" shall have the meaning set forth in Schedule-S;

"**Company**" means the company acting as the Concessionaire under this Agreement;

"**Competing Road**" [deleted]

"**Completion Certificate**" shall have the meaning set forth in Clause 14.2;

"**Concession**" shall have the meaning set forth in Clause 3.1.1;

"**Concessionaire**" shall have the meaning attributed thereto in the array of Partieshereinabove as set forth in the Recitals;

"**Concession Fee**" shall have the meaning set forth in Clause 26.1;

"**Concession Period**" means the period starting on and from the Appointed Date and ending on the Transfer Date;

"**Concessionaire Default**" shall have the meaning set forth in Clause 37.1.1;

"**Concurrent Auditor**" shall have the meaning set forth in Clause 33.2.4;

"**Conditions Precedent**" shall have the meaning set forth in Clause 4.1.1;

{"**Consortium**" shall have the meaning set forth in Recital (C);}

{"**Consortium Member**" means a company specified in Recital (C) as a member of theConsortium;}

"**Construction Period**" means the period beginning from the Appointed Date andending on the COD;

Construction Support: shall have the meaning set forth in Clause 25.5.1;

"**Construction Works**" means all works and things necessary to complete the Project Tunnel in accordance with this Agreement;

"**Construction Zone**" consists of the Main Carriage Way, median, paved and earthen shoulders, areas for structures including ROBs and RUBs, safety measures including roadsidedrains and furniture, and a parallel working space for accommodating slopes/retaining structures etc.

"Contractor" means the person or persons, as the case may be, with whom theConcessionaire has entered into any of the EPC Contract, the O&M Contract, the Tolling Contract or any other material agreement or contract for construction, operation and/or maintenance of the Project Tunnel or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

"Corridor" shall have the meaning set forth in Clause 10.3.1(a);

"Covenant" shall have the meaning set forth in Clause 5.2.6;

"**Cure Period**" means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

(a) commence from the date on which a notice is delivered by one Party to the otherParty asking the latter to cure the breach or default specified in such notice;

(b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and

(c) not in any way be extended by any period of Suspension under this Agreement;

Provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authorityor the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

"**DBFOT**" or "**Design, Build, Finance, Operate and Transfer**" -Deleted

"**Damages**" shall have the meaning set forth in Sub-clause (w) of Clause 1.2.1;

"**Debt Due**" means the aggregate of the following sums expressed in Indian Rupeesoutstanding on the Transfer Date:

(a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the "principal") but excluding any part of the principal that had fallen due for repayment one years prior to the Transfer Date, limited to maximum outstanding amount one year prior to the Transfer Date computed as per Schedule X.

For the avoidance of doubt and by way of illustration, if the Transfer Date is 31.12.2023 then any principal that had fallen due for repayment before 31.12.2022 shall be excluded for determination of principal amount of debt under this para (a);

Illustration:

Particulars				**Rs. in** Crore
Total Project Cost as per Concession Agreement				1,000.00
Cost of the Project under the Financing Agreement (Debt Equity Ratio 75:25)				1,200.00
Factor (Total Project Cost/cost of the Project under the Financing Agreements)				83.33%
(A) principal amount of debt drawn by the Concessionaire (75% of Rs. 1200 crore)				900
(B) principal amount of debt adjusted to Total Project Cost [900*83.33%]				750
S. no	**Principal amount of debt outstanding**	**31-12-2021**	**31-12-2022**	**31-12-2023**
1	As per Financing Agreements (in %)	100%	90%	80%
2	As per Financing Agreement	900.00	810.00	720.00

3	As per the Financing Agreement adjusted to TotalProject Cost (S.no. 2 multiplied by 83.33%)	750.00	675.00	600.00
	Principal amount of debt	**31-12-2021**	**31-12-2022**	**31-12-2023**
4	Outstanding	900.00	850.00	850.00
5	outstanding adjusted to Total Project Cost	750.00	708.33	708.33
6	Computed as per Schedule X	750.00	660.00	580.00
	Computation of principal amount of debt outstanding as on Transfer Date			
	Particulars			**Rs. In Crore**
7	principal amount of the debt provided by the Senior Lenders under the Financing Agreementsfor financing the Total Project Cost outstanding as on 31.12.2023 (i.e. Transfer Date) (Refer S.no. 5)			708.33
8	Less: any part of the principal that had fallen due for repayment prior to 31.12.2022 (i.e. oneyear prior to the Transfer Date) [708.33 (Refer S.no. 5) less 675.00 (Refer S.no. 3)]			(33.33)
9	principal amount of debt outstanding as on 31.12.2023 (i.e. on Transfer Date)(S. no. 7 less S.no.8)			**675.00**
10	principal amount of debt outstanding as on 31.12.2022 (i.e. one year prior to the Transfer Date) computed as per Schedule X (Refer S.no. 6)			**660.00**
11	**Principal amount of debt outstanding as on 31.12.2023 (Transfer Date) (Lowest of 9 or 10)**			**660.00**

(b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above untilthe Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payableunder the Financing Agreements to any Senior Lender, and (iii) any pre-paymentcharges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and

(c) any Subordinated Debt which is included in the Financial Package and disbursedby lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreementbe deemed to be Debt Due even after such conversion and the principal thereof shall bedealt with as if such conversion had not been undertaken;

Provided further that the Debt Due shall in no case exceed 85% (eighty five percent) of the Total Project Cost.

"**Debt Service**" means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lendersunder the Financing Agreements;

"**Development Period**" means the period from the date of this Agreement until the Appointed Date;

"**Dispute**" shall have the meaning set forth in Clause 44.1.1;

"**Dispute Resolution Board**" shall have the meaning set forth in Clause 44.2 a andSchedule 'W'.

"**Dispute Resolution Procedure**" means the procedure for resolution of Disputes setforth in Article 44;

"**Divestment Requirements**" means the obligations of the Concessionaire for and inrespect of Termination as set forth in Clause 38.1;

"**Document**" or "**Documentation**" means documentation in printed or written form, orin tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

"**Drawings**" means all of the drawings, calculations and documents pertaining to the Project Tunnel as set forth in Schedule-H, and shall include 'as built' drawings of theProject Tunnel;

"**EDI**" shall have the meaning set forth in Clause 22.4;

"**EPC Contract**" means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia,engineering and construction of the Project Tunnel in accordance with the provisionsof this Agreement;

"**EPC Contractor**" means the person with whom the Concessionaire has entered into an EPC Contract;

"**Emergency**" means a condition or situation that is likely to endanger the security of the individuals on or about the Project Tunnel, including Users thereof, or which posesan immediate threat of material damage to any of the Project Assets;

"**Encumbrances**" means, in relation to the Project Tunnel, any encumbrances such asmortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege orpriority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement underany insurance policy pertaining to the Project Tunnel, where applicable herein but excluding utilities referred to in Clause 11.1;

"**Environmental and Social Attributes**" means any and all carbon credits, credits, benefits, reductions, offsets and allowances arising out of any international, national or other laws or regulations (and whether now existing or enacted in the future), in relation to all fuel, emissions, air quality or other environmental characteristics and social characteristics, including any such laws or regulations relating to the avoidance of the emission of any gas, chemical or other substance to the air, soil or water during the operation of the Project and relating to social benefits resulting from such operation;

"**Equity**" means the sum expressed in Indian Rupees representing the paid-up equity share capital of the Concessionaire for meeting the equity component of the Total ProjectCost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capitalof the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component, but does not include Equity Support;

"**Equity Support**" Deleted;

"**Escrow Account**" means an Account which the Concessionaire shall open and maintain with a Bank in which all inflows and outflows of cash on account of capital and revenue receipts and expenditures shall be credited and debited, as the case may be,in accordance with the provisions of this Agreement, and includes the Sub-Accounts ofsuch Escrow Account;

"**Escrow Agreement**" shall have the meaning set forth in Clause 31.1.2;

"**Escrow Bank**" shall have the meaning set forth in Clause 31.1.1;

"**Escrow Default**" shall have the meaning set forth in Schedule-S;

"EVU or Equivalent Vehicle Unit" shall mean motorised vehicles liable to paymentof Toll Fee in accordance with the Fee Rules and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer, Motor Cycles and non-motorised vehicles. For the avoidance of doubt, the equivalency factors for conversion of different types of motorised vehicles into equivalent vehicle units shouldbe worked out as follows:

S. No.	Motorised Vehicle Type (Group of Vehicle)	EVU Factor
1.	Car, Jeep, Van or LMV	1.00
	Bus (2-Axle)	3.00

"**Exempted Vehicle**" means a vehicle exempted from payment of Fee under and in accordance with the Fee Rules;

"**Fee**" means the charge levied on and payable for a vehicle using the Project Tunnel or a part thereof, in accordance with the Fee Rules and this Agreement;

"**Fee Notification**" means the Notification to be issued by the Government, prior to theAppointed Date, in exercise of the powers conferred by Section 8A of the National Highways Act, 1956 read

with Rule 3 of the National Highways Fee (Determination ofRates and Collection) Rules, 2008, in respect of the levy and collection of Fee during the Concession Period, substantially in the form at Schedule-R;

"**Fee Rules**" mean the National Highways Fee (Determination of Rates and Collection) Rules, 2008read with National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2010 issued vide Notification No. G.S.R. 950(E) dated 03.12.2010, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2011 issued vide Notification No. G.S.R. 15(E) dated 12.01.2011, National Highways Fee (Determination of Rates and Collection) Second Amendment Rules, 2011 issued vide Notification No. G.S.R. 756(E) dated 12.10.2011, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2013 issued vide Notification No. G.S.R. 778(E) dated 16.12.2013, National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2014 issued vide Notification No. G.S.R. 26(E) dated 16.01.2014, National Highways Fee (Determinationof Rates and Collection) Second Amendment Rules, 2014 issued vide Notification No G.S.R. 831 (E) dated 21.11.2014 and National Highways Fee (Determination of Rates and Collection) Amendment Rules, 2015 issued vide Notification No. G.S.R. 220(E) dated 23.03.15, and its subsequent amendments upto the Bid Due Date;

"**Financial Close**" means the fulfilment of all conditions precedent to the initial availability of funds under the Financing Agreements;

"**Financial Default**" shall have the meaning set forth in Schedule-V;

"**Financial Model**" means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, andincludes a description of the assumptions and parameters used for making calculations and projections therein;

"**Financial Package**" means the financing package indicating the total capital cost of Project Tunnel and the means of financing thereof, as set forth in the Financial Model andapproved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, Subordinated Debt {,Equity Support, if any} and Construction Support;;

"**Financing Agreements**" means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instrumentsincluding loan agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

"**Force Majeure**" or "**Force Majeure Event**" shall have the meaning ascribed to it in Clause 34.1;

"**GOI**" or "**Government**" means the Government of India or Government of Karnataka;

"**Good Industry Practice**" means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally andreasonably expected from a reasonably skilled and experienced operator engaged in thesame type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire inaccordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

"**Government Instrumentality**" means any department, division or sub-division of theGovernment or the State Government and includes any commission, board, authority, agency or municipal and other local authority or statutory body including Panchayat under the control of the Government or the State Government, as the case may be, and having jurisdiction over all or any part of the Project Tunnel or the performance of allor any of the services or obligations of the Concessionaire under or pursuant to this Agreement;

"**Grant**" Deleted;

"**Gross Vehicle Weight**" or "**GVW**" means in respect of any vehicle the total weight ofthe vehicle and load certified and registered under the Applicable Laws;

"Heavy construction machinery" or "Earth moving equipment" or "multi-axle vehicle" means heavy construction machinery or earth moving equipment or mechanicalvehicle including a multi-axle vehicle with four to six axles or vehicle (inclusive of theaxle of the trailer, if any) with a gross vehicle weight exceeding 25,000 (twenty-five thousand) kilograms but less than 60,000 (sixty thousand) kilograms;

"**IRC**" means the Indian Roads Congress;

"**Indemnified Party**" means the Party entitled to the benefit of an indemnity pursuant to Article 42;

"**Indemnifying Party**" means the Party obligated to indemnify the other Party pursuantto Article 42;

"**Independent Engineer**" shall have the meaning set forth in Clause 23.1; "**Indirect Political Event**" shall have the meaning set forth in Clause 34.3;

"**Insurance Cover**" means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 32, and includes all insurances required to be taken out by the Concessionaire under Clause 32.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

"**Intellectual Property**" means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semi-conductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and includingapplications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

"**LOA**" or "**Letter of Award**" means the letter of award referred to in Recital (E);

"**Lead Member**" shall have the meaning set forth in Recital (C);

"**Lenders' Representative**" means the person duly authorised by the Senior Lenders toact for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

"**Light Commercial Vehicle**" or "**LCV**" means any mechanical vehicle being a passenger vehicle, minibus, light goods vehicle or goods carrier with a Gross Vehicle Weight exceeding 7,500 (seven thousand five hundred) kilograms but less than 12,000 (twelve thousand) kilograms or a registered passenger carrying capacity exceeding 12 (twelve) but less than 32 (thirty two), excluding the driver, and includes a Tractor with Trailer;

"**MORTH**" means the Ministry of Road Transport and Highways or any substitute thereof dealing with National Highways;

"**Maintenance Manual**" shall have the meaning ascribed to it in Clause 17.3;

"**Maintenance Programme**" shall have the meaning ascribed to it in Clause 17.4.1;

"**Maintenance Requirements**" shall have the meaning set forth in Clause 17.2;

"**Material Adverse Effect**" means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with theprovisions of this Agreement and which act or event causes a material financial burdenor loss to either Party;

["**Medical Aid Post**" shall have the meaning set forth in Clause 21.1;]

"**Motorcycle**" means and includes any two-wheeled motor vehicle;

"Mutual Foreclosure Agreement" shall mean the agreement executed under Clause 37.7 pursuant to the execution of which all rights, claims, and obligations of the Partiesarising under the Agreement shall cease;

"**Nominated Company**" means (i) a company selected by the Lenders' Representativeand proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement or (ii) wherever the Selected Bidder/Consortium Members of the

Concessionaire are sought to be substituted in accordance with Clause 3A of the Substitution Agreement, the Concessionaire itself;

"**Non-Political Event**" shall have the meaning set forth in Clause 34.2;

"**O&M**" means the operation and maintenance of the Project Tunnel and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

"**O&M Contract**" means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or anyof the O&M obligations;

"**O&M Contractor**" means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

"**O&M Expenses**" means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities (including electricity charges) and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, Tolling Contract or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

"**O&M Inspection Report**" shall have the meaning set forth in Clause 19.2;

"**O&M Support**" Deleted;

"**Operation Period**" means the period commencing from Appointed Date and ending on the Transfer Date;

"**Oversized Vehicle**" means any mechanical vehicle having 7 (seven) or more axles ora Gross Vehicle Weight exceeding 60,000 (sixty thousand) kilograms;

"**PCU**" shall have the meaning ascribed to a passenger car unit in the Indian Roads Congress Publication No. IRC-64, 1990 or any substitute or modification thereof, and when used in this Agreement, shall include only motorised vehicles liable to payment ofuser charges at the Toll Plaza[s] in accordance with the Fee Rules and the Exempted Vehicles specified therein, but does not include Tractors, Tractors with Trailer, Motor Cycles and non-motorised vehicles;

"**Panel of Chartered Accountants**" shall have the meaning set forth in Clause 33.2.1;

"**Parties**" means the parties to this Agreement collectively and "Party" shall mean anyof the parties to this Agreement individually;

"**Payment Milestone"** shall have the meaning set forth in Clause 25.5.2.

"**Performance Guarantee**" shall have the meaning set forth in Clause 39.2.3;

"**Performance Security**" shall have the meaning set forth in Clause 9.1;

"**Physical Progress**" shall mean the physical construction of the Project completed by the Concessionaire and shall be measured as per the assessment done by the Independent Engineer in accordance with Clause 25.5 of this Agreement.

"**Political Event**" shall have the meaning set forth in Clause 34.4;

"**Preservation Costs**" shall have the meaning set forth in Clause 13.5.3;

{"**Premium**" Deleted;}

"**Project**" means the construction, operation and maintenance of the Project Tunnel in accordance with the provisions of this Agreement, and includes all works, services andequipment relating to or in respect of the Scope of the Project;

"**Project Agreements**" means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, Tolling Contract, and any other material agreements orcontracts that may be entered into by

the Concessionaire with any person in connectionwith matters relating to, arising out of or incidental to the Project, but does not include the Escrow Agreement, Substitution Agreement, or any agreement for procurement of goods and services involving a consideration of upto Rs.[5(five)] crore;

"**Project Assets**" means all physical and other assets relating to and forming part of theSite including

(a) rights over the Site in the form of license, Right of Way or otherwise;

(b) tangible assets such as civil works and equipment including foundations, embankments, pavements, road surface, interchanges, bridges, culverts, road overbridges, drainage works, traffic signals, sign boards, kilometre-stones, toll plaza[s], intermodal hubs, electrical systems, communication systems, rest areas, relief centres, maintenance depots and administrative offices;

(c) buildings and immovable fixtures or structures forming part of Commercial Property Development;

(d) Project Facilities situated on the Site;

(e) all rightsof the Concessionaire under the Project Agreements;

(f) financial assets, such as receivables, security deposits etc.;

(g) insurance proceeds; and

(h) Applicable Permits and authorisations relating to or in respect of the Project Tunnel, but does not includeAdditional Facilities;

"**Project Completion Date**" means the date on which the Completion Certificate or theProvisional Certificate, as the case may be, is issued under the provisions of Article 14;

"**Project Completion Schedule**" means the progressive Project Milestones set forth inSchedule-G for completion of the Project Tunnel on or before the Scheduled Completion Date;

"**Project Facilities**" means all the amenities and facilities situated on the Site, as described in Schedule-C;

"**Project Tunnel"** means the Site comprising the existing road comprising (A) Design and Construction of 3-Lane Underground Twin Tunnel Road from Hebbal Esteem Mall junction (Km. 0+000) and Silk Board KSRP Junction (Km.16+745) along with 3-lane/2-lane entry & exit ramps on Modified BOOT Mode including operation and maintenance in Bengaluru City (North South Corridor). Package-2 Seshadri Road (Km 8.748) to Silk Board (Km 16.745). and all Project Assets, and its subsequent development and augmentation in accordance with this Agreement;

"**Project Milestones**" means the project milestones set forth in Schedule-G;

"**Provisional Certificate**" shall have the meaning set forth in Clause 14.3;

"**Punch List**" shall have the meaning ascribed to it in Clause 14.3and, if applicable, shallonly include any or all of the below:

(i) plantation of avenue trees along the edge of the RoW and other landscapingworks within RoW

(ii) completion of work on Provision of Unlined Roadside Drains

(iii) lining of roadside drains in identified stretches

(iv) construction of rest areas, as approved

(v) completion of Fencing Works of RoW

(vi) turfing on embankment slopes in identified sections

(vii) pointing to Stone Masonry works in identified Cross Drainage Structures

(viii) stone Pitching at identified locations;

(ix) Any other item as specifically agreed by the Authority

"**RBI**" means the Reserve Bank of India, as constituted and existing under the Reserve Bank of India Act, 1934, including any statutory modification or replacement thereof, and its successors;

"**Re.**", "**Rs.**" or "**Rupees**" or "**Indian Rupees**" means the lawful currency of theRepublic of India;

"**Realisable Fee**" means all the Fee due and realisable under this Agreement, but does not include fees that the Concessionaire has not been able to realise after due diligence and best efforts. For the avoidance of doubt, Realisable Fee shall, save as provided in Clause 26.5, be the amount so declared by the Concessionaire on the basis of its provisional accounts or the audited accounts, as the case may be, and in the event of a dispute thereto, the Dispute Resolution Procedure shall apply;

"**Reference Exchange Rate**" means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted in Delhi by theState Bank of India, and in the absence of such rate, the average of similar rates quoted in Delhi by the Bank of India and the Bank of Baroda;

"**Request for Proposals**" or "**RFP**" shall have the meaning set forth in Recital (D);

"**Request for Qualification**" or "**RFQ**" shall have the meaning set forth in Recital (B);

"**Revenue Shortfall Loan**" shall have the meaning set forth in Clause 28.1.1;

"**Right of Way**" means the constructive possession of the Site, together with all way leaves, easements, unrestricted access and other rights of way to be read in conjunction with "Construction Zone", howsoever described, necessary for construction, operation and maintenance of the Project Tunnel in accordance with this Agreement;

"**Safety Consultant**" shall have the meaning set forth in Clause 18.1.2; "**Safety Requirements**" shall have the meaning set forth in Clause 18.1.1;"**Safety Fund**" shall have the meaning set forth in Clause 18.2;

"**Scheduled Completion Date**" shall have the meaning set forth in Clause 12.4.1;

"**Scope of the Project**" shall have the meaning set forth in Clause 2.1;

"**Senior Lenders**" means the financial institutions, banks, non-banking financial companies, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold *pari passu*charge on the assets, rights, title and interests of the Concessionaire.

Provided that for the purpose of this definition, financial institutions, banks, and multilateral lending agencies shall at least have a net worth of Rs. 1,000 Crore (Rs. one thousand crore), andnon-banking financial companies shall at least have a net worth of Rs 500 Crore (Rs. Five hundred crore);

"**Shareholders' Agreement**" shall have the meaning set forth in Clause 5.4.1;

"**Site**" shall have the meaning set forth in Clause 10.1;

"**Specifications and Standards**" means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project Tunnel, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project Tunnel submitted by the Concessionaire to, andexpressly approved by, the Authority;

"**Specified Assets**" means and includes all buildings and immovable fixtures or structures forming part of Commercial Property Development but shall not include land;

"**State**" means the State of Karnataka "**State Government**" means the government ofthat State;

"**State Support Agreement**" shall have the meaning set forth in Clause 47.3;

"**Statutory Auditors**" means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act, 1956 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 33.2.1;

"**Subordinated Debt**" means the aggregate of the following sums expressed in Indian Rupees or in the currency of debt, as the case may be, outstanding as on the Transfer Date:

(a) the principal amount of debt provided by lenders or the Concessionaire's shareholders for meeting the Total Project Cost and subordinated to the financialassistance provided by the Senior Lenders, limited to maximum outstanding amount on Transfer Date computed as per Schedule X; and

(b) all accrued interest on the debt referred to in Sub-clause (a) above but restrictedto the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in Indian Rupees and lesser of the actualinterest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (twoper cent) in case of loans expressed in foreign currency, but does not include anyinterest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at theoption of the lenders and/or the Concessionaire's shareholders, it shall for the purposesof this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

"**Subsistence Revenue**" means the total amount of Fee revenue that is required by the Concessionaire in an Accounting Year to meet the sum of (a) O&M Expenses, subject to an annual ceiling of 3% (three per cent) of the Total Project Cost, {plus Grant, if any,}during the first Accounting Year after COD, to be revised for each subsequent year to reflect the variations in WPI occurring between COD and commencement of such Accounting Year, and (b) Debt Service in such Accounting Year, but excluding any interest paid by the Authority under clause 34.7.2 or 35.2;

"Supplementary Agreement" shall mean the agreement executed between the Partiesnovating any term and/or condition of the Agreement, upon the execution of which all rights and claims of the Concessionaire in respect of the novated terms and conditions shall cease;

"**Substitution Agreement**" shall have the meaning set forth in Clause 40.3;

"**Suspension**" shall have the meaning set forth in Clause 36.1;

"**Taxes**" means any Indian taxes including excise duties, customs duties, value added tax, sales tax, local taxes, cess and any impost or surcharge of like nature (whether Central, State or local) on the goods, materials, equipment and services incorporated inand forming part of the Project Tunnel charged, levied or imposed by any GovernmentInstrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

"**Termination**" means the expiry or termination of this Agreement and the Concessionhereunder;

"**Termination Notice**" means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

"**Termination Payment**" means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part ofthe Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shallbe computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreedthat within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment. It is further agreed that at any time during the Concession Period,the aggregate of Debt Due and Adjusted Equity shall be limited to Total Project Cost forthe purpose of computing the Termination Payment;

"**Tests**" means the tests set forth in Schedule-I to determine the completion of Project Tunnel in accordance with the provisions of this Agreement.

"**Three-Axle Vehicle**" means any mechanical vehicle having three-axles (inclusive of the axle of the

trailor, if any) and with a gross vehicle weight, less than or equal to 25000(twenty-five thousand) kilograms

"**Toll Plaza**" means the structures, equipment and other facilities installed at the entry and exit points of the Project Tunnel for the purpose of Toll collection,

"**Tolling Contract**" means the contract, if any, entered into by the Concessionaire withthe Tolling Contractor for collection of Fee for and on behalf of the Concessionaire and matters incidental thereto;

"**Tolling Contractor**" means the person, if any, with whom the Concessionaire has entered into a Tolling Contract;

"Total Concession Value" The NPV of the toll revenues that the developer seeks to recover during the concession period, as on Appointed Date

"**Total Project Cost**" means the lowest of:

(a) the capital cost of the Project, less Construction Support as set forth in the Financial Package;

(b) the actual capital cost of the Project upon Completion of the Project Tunnel less Construction Support; and

(c) a sum of Rs. **(Estimated Project Cost) ** Cr. (Rs. ***** Only), less Construction Support;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of incomplete works, if any, and further to the extent of variation in WPI or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; providedfurther that in the event WPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in WPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

"**Tractor**" means a motor vehicle which is not itself constructed to carry any load otherthan the equipment used for the purpose of propulsion, but does not include a road roller;and "Tractor with Trailer" means a Tractor with an attached vehicle laden with goods other than agricultural produce or agricultural equipment;

"**Traffic Aid Post**" shall have the meaning set forth in Clause 20.2;

"**Transfer Date**" means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

"**Truck**" means any mechanical vehicle being a goods carrier with a Gross Vehicle Weight exceeding 12,000 (twelve thousand) kilograms, but less than 20,000 (twenty thousand) kilograms;

"**User**" means a person who travels or intends to travel on the Project Tunnel or any part thereof in/on any vehicle on payment of Fee or in accordance with the provisions of this Agreement and Applicable Laws;

"**Vesting Certificate**" shall have the meaning set forth in Clause 38.4; and

"Viability Gap Funding" shall have the meaning set forth in Article 25;

"**WPI**" means the Wholesale Price Index for all commodities as published by the Ministry of Industry, GOI and shall include any index which substitutes the WPI, and any reference to WPI shall, unless the context otherwise requires, be construed as a reference to the WPI published for the period ending with the preceding month.

IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVEREDTHIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.

SIGNED, SEALED AND DELIVERED

For and on behalf of
THE AUTHORITY by:

(Signature)
(Name)
(Designation)

THE COMMON SEAL OF CONCESSIONAIRE has been affixed pursuant to the resolution passed by the Board of Directors of the Concessionaire atits meeting held on the …… day of 20…… hereunto affixed in the presence of ……....……, Director, who has signed these presents in token thereof and ……, company Secretary / Authorised Officer who has countersigned the same in token thereof:

In the presence of
1.

2.